

# Exhibit C

<p style="text-align: right;">Page 1</p> <p>1 IN THE UNITED STATES DISTRICT COURT FOR THE 2 WESTERN DISTRICT OF MISSOURI 3 CENTRAL DIVISION 4 SHONDEL CHURCH, et al, ) 5 Plaintiffs, ) 6 vs. ) Case No. 17-04057-CV-C-NKL 7 STATE OF MISSOURI, et al, ) 8 Defendants. ) 9 ) 10 ) 11 ) 12 ) 13 ) 14 ) 15 ) 16 VIDEOTAPED DEPOSITION OF ROD HACKATHORN 17 TAKEN ON BEHALF OF THE PLAINTIFFS 18 DECEMBER 20, 2017 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 3</p> <p>1 UNITED STATES DISTRICT COURT FOR THE 2 WESTERN DISTRICT OF MISSOURI 3 CENTRAL DIVISION 4 SHONDEL CHURCH, et al, ) 5 Plaintiffs, ) 6 vs. ) Case No. 17-04057-CV-C-NKL 7 STATE OF MISSOURI, et al, ) 8 Defendants. ) 9 ) 10 ) 11 ) 12 VIDEOTAPED DEPOSITION OF ROD HACKATHORN, 13 produced, sworn, and examined on December 20, 2017, between 14 the hours of 9:00 o'clock in the forenoon and 1:00 o'clock 15 in the afternoon of that day, at Alaris Litigation 16 Services, 2422 East Madrid Street, Springfield, Missouri 17 65084, before Jenna Petree, in a certain cause now pending 18 UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF 19 MISSOURI CENTRAL DIVISION, wherein SHONDEL CHURCH, et al 20 are the Plaintiffs, and STATE OF MISSOURI, et al are the 21 Defendants. 22 23 24 25</p>
<p style="text-align: right;">Page 2</p> <p>1 INDEX 2 WITNESS: Rod Hackathorn 3 Direct Examination .....6 4 Cross Examination.....104 5 Cross Examination.....127 6 Redirect Examination .....131 7 8 EXHIBITS 9 Exhibit 47 .....10 10 Exhibit 48 .....27 11 Exhibit 49 .....34 12 Exhibit 50 .....120 13 Exhibit 51 .....76 14 Exhibit 52 .....76 15 Exhibit 53 .....82 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 4</p> <p>1 APPEARANCES 2 For the Plaintiffs: 3 Matthew R. Shahabian 4 Anjali Prasad 5 ORRICK, HERRINGTON &amp; SUTCLIFFE, LLP 6 51 West 52nd Street 7 New York, NY 10019 8 mshahabian@orrick.com 9 aprasad@orrick.com 10 For the Defendants: 11 Steven Alan Ramsey 12 STATE OF MISSOURI 13 Attorney General's Office 14 221 West High Street 15 Jefferson City, MO 65101 16 573-751-9167 17 Steven.Ramsey@ago.mo.gov 18 For the Public Defenders: 19 Jacqueline Shipma 20 MISSOURI STATE PUBLIC DEFENDER 21 General Counsel 22 Woodrail Centre 23 1000 West Nifong 24 Building 7, Suite 100 25 Columbia, MO 65203 573-526-5212 Jacqueline.Shipma@mspd.mo.gov  The Court Reporter: Jenna Petree Alaris Litigation Services 2511 Broadway Bluffs Columbia, MO 65201 573-449-0561 The Videographer: Bethany Scutti - Alaris Litigation Services</p>

1 (Pages 1 to 4)

<p style="text-align: right;">Page 5</p> <p>1 THE VIDEOGRAPHER: We are on the record.  2 Today's date is December 20, 2017 and the time is 8:57 a.m.  3 This is the video recorded deposition of Rod Hackathorn in  4 the matter of Shondel Church et al. versus State of  5 Missouri et al, Case No. 17-04057-CV-C-NKL in the U.S.  6 District Court for the Western District of Missouri,  7 Central Division.  8 This deposition is being held at Alaris  9 Litigation Services, 2422 East Madrid Street, Springfield,  10 Missouri 65804.  11 The reporter's name, Jenna Petree. My name is  12 Bethany Scutti. I'm the legal videographer. We are with  13 Alaris Litigation Services.  14 Would the attorneys please introduce  15 themselves.  16 MR. SHAHABIAN: Matt Shahabian from Orrick for  17 the plaintiffs.  18 MS. PRASAD: Anjali Prasad from Orrick for the  19 plaintiffs.  20 MR. RAMSEY: Steven Alan Ramsey. I'm for the  21 State of Missouri and Governor Greitens.  22 MS. SHIPMA: Jacqueline Shipma for the MSPD  23 defendants.  24 THE VIDEOGRAPHER: Would the court reporter  25 please swear in the witness.</p>	<p style="text-align: right;">Page 7</p> <p>1 who will be transcribing the deposition. So because she'll  2 be writing everything down, you'll need to answer with  3 verbal responses to every question; shaking your head won't  4 get picked up on the record, even though it will get picked  5 up in the video. So yes or no, complete sentence is fine,  6 but nonverbal responses won't work.  7 A I understand.  8 Q Wait for me to finish the question before you  9 begin the answer. It's a little more difficult for the  10 court reporter if we are talking over each other. Either  11 your counsel or counsel for the State may have objections  12 to my questions. Unless you're instructed not to answer  13 the question, you should still answer even if there is an  14 objection. If you don't understand any of my questions,  15 please let me know. I will try to rephrase and make it  16 more comprehensible, and if you need a break at any time,  17 just let me know. The only rule is you can't have a break  18 if there is a question pending. So after you answer the  19 question, if you would like a break, just let me know.  20 A Okay.  21 Q Anything unclear about my instructions?  22 A Not at all.  23 Q What did you do to prepare for this deposition  24 today?  25 A I did meet last week with Jacqueline Shipma.</p>
<p style="text-align: right;">Page 6</p> <p>1 IT IS HEREBY STIPULATED AND AGREED, by and  2 between counsel for the Plaintiffs and counsel for the  3 Defendants, that the deposition of ROD HACKATHORN may be  4 taken in shorthand by Jenna Petree, and afterwards  5 transcribed into typewriting; and the signature of the  6 witness is expressly reserved.  7 * * * * *  8 ROD HACKATHORN,  9 of lawful age, produced, sworn, and examined on behalf of  10 the Plaintiffs, deposes and says:  11 QUESTIONS BY MR. SHAHABIAN:  12 Q Could you please introduce yourself for the  13 record?  14 A My name is Rod Hackathorn.  15 Q Good morning, Mr. Hackathorn. How are you?  16 A I'm good. How are you?  17 Q Good. I'm Matt Shahabian. I'm one of the  18 plaintiff -- counsel for the plaintiffs. And I wanted to  19 thank you for taking the time to answer some questions  20 today.  21 A Certainly.  22 Q Have you ever been deposed before?  23 A Don't believe I've ever been deposed.  24 Q So, let's go over some ground rules how this  25 deposition will proceed. So there is a court reporter here</p>	<p style="text-align: right;">Page 8</p> <p>1 Q And is that counsel present here today?  2 A Yes.  3 Q Did you review any documents in preparation  4 for the deposition?  5 A I didn't necessarily review any documents. I  6 reviewed some of our data that's on the computer.  7 Q What kind of data did you review?  8 A I looked back at our numbers concerning cases  9 that had been initiated over the last couple of fiscal  10 years and where we were at in the number of cases -- excuse  11 me -- number of cases that we had initiated so far this  12 year.  13 Q Did you review anything else in preparation  14 for this deposition?  15 A I don't think.  16 Q Did you talk to anybody else in preparation  17 for this deposition?  18 A No.  19 Q Could you please tell us your title?  20 A My title is district defender.  21 Q Is that a general title or is that specific to  22 a particular region?  23 A It's a specific title. It's a -- it pertains  24 to the managing attorney of a trial office or any of our  25 appellate offices.</p>

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<p style="text-align: right;">Page 9</p> <p>1       <b>Q And who are you employed by?</b></p> <p>2       A The Missouri State Public Defender System.</p> <p>3       <b>Q What trial offices do you cover as district</b></p> <p>4       <b>defender?</b></p> <p>5       A I supervise the Springfield Area 31 trial</p> <p>6       office.</p> <p>7       <b>Q Is Springfield the only geographic locality</b></p> <p>8       <b>covered by Area 31?</b></p> <p>9       A No. Our office is located in Springfield,</p> <p>10      Missouri, but we handle Greene, Christian, and Taney</p> <p>11      counties.</p> <p>12      <b>Q And those three counties make up area 31?</b></p> <p>13      A Yes, sir.</p> <p>14      <b>Q How long have you been district defender?</b></p> <p>15      A Right -- well, come January 1, I believe it</p> <p>16      will be 15 years.</p> <p>17      <b>Q Congratulations.</b></p> <p>18      A Thank you.</p> <p>19      <b>Q Could you briefly describe your employment</b></p> <p>20      <b>history prior to becoming district defender?</b></p> <p>21      A Well, I started with the Missouri State Public</p> <p>22      Defender System right out of law school. And I have</p> <p>23      actually been with the Springfield office the entire time,</p> <p>24      of course starting as an assistant public defender.</p> <p>25      <b>Q When did you graduate law school?</b></p>	<p style="text-align: right;">Page 11</p> <p>1       you've had a chance.</p> <p>2       A It appears I stand corrected. It's been a</p> <p>3       while back but, yes, apparently I was named one of the ten</p> <p>4       best lawyers.</p> <p>5       <b>Q Does this refresh your recollection at all?</b></p> <p>6       A It does.</p> <p>7       <b>Q You were named one of the ten best lawyers in</b></p> <p>8       <b>Missouri?</b></p> <p>9       A Yes, sir.</p> <p>10      <b>Q You can put that aside. So what are your</b></p> <p>11      <b>responsibilities as district defender?</b></p> <p>12      A Just all the various duties?</p> <p>13      <b>Q General duties.</b></p> <p>14      A Okay. It involves supervising the attorneys.</p> <p>15      So I spend a lot of time with them talking about their</p> <p>16      cases, especially the newer attorneys, and make sure that</p> <p>17      things are getting done that need to be done. Even the</p> <p>18      more experienced attorneys, I help them brainstorm on</p> <p>19      issues of complex cases. I'm responsible for approving</p> <p>20      time sheets, expense reports, expense requests to get money</p> <p>21      to hire experts and that sort of thing. I sign off on all</p> <p>22      the bills. I'm responsible for the hiring. Any personnel</p> <p>23      matters that arise, in a large office like ours, there is</p> <p>24      inevitably conflict between a couple people every now and</p> <p>25      then and we have to get involved with that. I assign all</p>
<p style="text-align: right;">Page 10</p> <p>1       A 1997.</p> <p>2       <b>Q Have you ever been recognized professionally</b></p> <p>3       <b>for your accomplishments as an attorney?</b></p> <p>4       A I did receive an award from the Missouri Bar,</p> <p>5       the Charles East Shaw award. Actually, I'm sorry, that's</p> <p>6       the Missouri Association of Criminal Defense Lawyers, I</p> <p>7       received an award from them.</p> <p>8       <b>Q Were you ever named one of the ten best</b></p> <p>9       <b>lawyers in Missouri?</b></p> <p>10      A I don't believe so, no.</p> <p>11      <b>Q I'm showing you, I will ask the court reporter</b></p> <p>12      <b>to mark this exhibit. We'll call it Hackathorn 1.</b></p> <p>13      MS. SHIPMA: We left off at Exhibit 46 was the</p> <p>14      last one we used.</p> <p>15      MR. SHAHABIAN: Okay. So let's call it</p> <p>16      Exhibit 47. Thank you, Jackie.</p> <p>17      MS. SHIPMA: Your welcome.</p> <p>18      (EXHIBIT NO. 47 WAS MARKED FOR IDENTIFICATION</p> <p>19      BY THE COURT REPORTER.)</p> <p>20      A Sorry, if you bear with me a minute.</p> <p>21      <b>Q Please take your time.</b></p> <p>22      A Pretty small print you got there.</p> <p>23      <b>Q I apologize for the print. These internet</b></p> <p>24      <b>documents don't always print the best. If you can just</b></p> <p>25      <b>take a minute and review this document and let me know when</b></p>	<p style="text-align: right;">Page 12</p> <p>1       of the felony cases and review the probable cause</p> <p>2       statements for potential conflicts. I'm probably missing</p> <p>3       something, but that's the bulk of it.</p> <p>4       <b>Q Okay. How many people are employed by the</b></p> <p>5       <b>area 31 offices?</b></p> <p>6       A Counting myself, if we are at full staff, it</p> <p>7       would be 22 attorneys and I have eight support staff and</p> <p>8       then one part-time support staff person.</p> <p>9       <b>Q What do you mean if you would be at full</b></p> <p>10      <b>staff?</b></p> <p>11      A Over the last few years, it seems like the</p> <p>12      bulk of the time we are not at full staff. We always -- it</p> <p>13      seems like we have an open position. Right now I have</p> <p>14      three open attorney positions.</p> <p>15      <b>Q Why are there open positions as opposed to</b></p> <p>16      <b>being at full staff?</b></p> <p>17      A Well, for the three that we have open right</p> <p>18      now, I had two attorneys that resigned over the last few</p> <p>19      months, and the third position is actually a position that</p> <p>20      has been granted to us by the director. I don't know where</p> <p>21      that money comes from or, you know, if that came at the</p> <p>22      expense of another office, but I know our office has always</p> <p>23      had higher numbers than a lot of other offices in the state</p> <p>24      as far as the number of cases that we handle so we were</p> <p>25      given an additional position.</p>

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<p style="text-align: right;">Page 13</p> <p>1       <b>Q</b> So you said full staff would be 22 attorneys,  2 but there are currently 19 attorneys in the office; is that  3 right?  4       A That would be correct.  5       <b>Q</b> And on average what is the experience level of  6 an attorney in your office?  7       A We have fared pretty well over the last  8 several years as far as turnover on attorneys. So we do  9 have quite a few attorneys who have are either what we call  10 APD 3 or APD 4, which is our top two assistant public  11 defender positions. Right now, I think we only have three  12 attorneys that have only maybe a year of experience or  13 less.  14       <b>Q</b> Do you report to anybody as district defender?  15       A Yes.  16       <b>Q</b> Who do you report to?  17       A My direct supervisor would be Ellen Blau. She  18 is our trial division director.  19       <b>Q</b> Where does she work?  20       A All over the state. She's constantly on the  21 move.  22       <b>Q</b> Would it be fair to say she's in the central  23 office for the state defender?  24       A Yes.  25       <b>Q</b> What directions do you receive from Ellen Blau</p>	<p style="text-align: right;">Page 15</p> <p>1 expectation and go to more like 45 to 60 days.  2       <b>Q</b> And we'll come back to client contact in a  3 bit. Just starting with a more general picture of the  4 office; what is the current workload based on your review  5 of the data?  6       A Right at this moment in time, most of our  7 attorneys are hovering right around hundred cases open.  8       <b>Q</b> Would you say that in your experience that's  9 above average, that's typical, or that's below average?  10       A That is below average.  11       <b>Q</b> How far below average?  12       A Ordinarily, a typical caseload would be  13 anywhere from 150 to 200 cases.  14       <b>Q</b> Why is the caseload so much lower below  15 average right now?  16       A Over last three months we have been  17 waitlisting a lot of potential clients who would qualify  18 for our services and because of that, the numbers have went  19 down.  20       <b>Q</b> So when you say the average caseload is about  21 hundred cases, that's not including indigent defendants who  22 would qualify for representation by your office but are on  23 a waitlist?  24       A Correct.  25       <b>Q</b> How are cases assigned to defenders in your</p>
<p style="text-align: right;">Page 14</p> <p>1 or anybody else in the central office about how to run your  2 office?  3       A Well, we have our guidelines for  4 representation. We have our Employee Handbook that states  5 a lot of our MSPD policies. I mean, that's pretty much.  6 Then I can -- whenever there are issues as to how to handle  7 situations, then I go to her or Michael Barrett, who is our  8 director.  9       <b>Q</b> Do you -- Is it fair to say you have a lot of  10 discretion over how the attorneys in your office handle  11 their cases?  12       A I think that's fair to say.  13       <b>Q</b> Is there anything that you lack discretion  14 over in terms of how cases are handled?  15       A Well, as far as how cases are handled, we  16 should be going by our guidelines for representation. But  17 depending on how overworked I guess an office is, there  18 some discretion there on, I guess for lack of a better  19 term, fudge some of the expectations. And so I do have  20 some discretion there and I have had to at times,  21 especially with contact with clients, our expectation is  22 that they would see their clients with, you know, that are  23 incarcerated at least every month. That gets almost  24 impossible to do with the number of cases we've had over  25 the last few years, so I've had to decrease that</p>	<p style="text-align: right;">Page 16</p> <p>1 office?  2       A Ordinarily -- now things have changed over the  3 last three months because of the whole waitlist issue --  4 but ordinarily cases would be assigned by -- I have some  5 attorneys that are assigned specifically to Taney County.  6 I have some attorneys that are assigned specifically to  7 Christian County, and then in Greene County because it's so  8 much larger and we have many more courts. We have actually  9 four associate courts, we split up our Greene County  10 attorneys where they receive -- they are assigned to a  11 specific associate court and they received all of our cases  12 that arise out of that division and then they follow them  13 on through to circuit court. Misdemeanors and probation  14 violations, I gave -- I give basically a list to our clerks  15 of who to assign those to and as they come in, they rotate  16 through that list and assign those out. All felony cases  17 are given to either me or the deputy district defender.  18 Because we split up the attorneys as far as who assigns  19 cases to who, our deputy district defender assigns the  20 felonies out to attorneys in Taney County and half of the  21 attorneys in Greene County; and then I assign the felonies  22 out for Christian County and half of the attorneys in  23 Greene County.  24       <b>Q</b> Who is this deputy district director?  25       A Chris Hatley.</p>

4 (Pages 13 to 16)

<p style="text-align: right;">Page 17</p> <p>1       <b>Q</b> Roughly how much of your time would you say is</p> <p>2 <b>spent on administrative tasks?</b></p> <p>3       <b>A</b> At least 75 to 80 percent.</p> <p>4       <b>Q</b> Do you have your own caseload in addition to</p> <p>5 <b>your administrative responsibilities?</b></p> <p>6       <b>A</b> I do, but it's a much lower caseload than what</p> <p>7 <b>our assistant public defenders handle.</b></p> <p>8       <b>Q</b> How many case do you handle roughly per year?</p> <p>9       <b>A</b> On average -- I couldn't tell you exactly by</p> <p>10 <b>year -- but on average I usually have around 25 to 30 open</b></p> <p>11 <b>cases at a time.</b></p> <p>12       <b>Q</b> And what kinds of cases do you typically</p> <p>13 <b>handle?</b></p> <p>14       <b>A</b> I only assign myself felony cases. Now if</p> <p>15 <b>that client also has a pending misdemeanor or probation</b></p> <p>16 <b>violation, I will take that as well, but they would have</b></p> <p>17 <b>some pending felony. I try to give myself some sort of</b></p> <p>18 <b>variation, but I have murder. I try to take a lot of</b></p> <p>19 <b>complex cases, sex cases, murder case, but also some of the</b></p> <p>20 <b>lower grade C,D grade felonies.</b></p> <p>21       <b>Q</b> Could you walk-through typically how a public</p> <p>22 <b>defender approaches a new case that they are brought on, a</b></p> <p>23 <b>felony-level case?</b></p> <p>24       <b>A</b> Well, they would usually start by having that</p> <p>25 <b>initial meeting with the client.</b></p>	<p style="text-align: right;">Page 19</p> <p>1 <b>arraigning defendants before counsel is assigned?</b></p> <p>2       <b>A</b> I'm sorry, could you ask that question again?</p> <p>3       <b>Q</b> Sure. Are there negative consequences to</p> <p>4 <b>defendants having an arraignment before they are assigned</b></p> <p>5 <b>counsel?</b></p> <p>6       <b>A</b> There certainly can be. They can say things</p> <p>7 <b>that they shouldn't be saying in open court. But I can't</b></p> <p>8 <b>give you an example of where that's necessarily come back</b></p> <p>9 <b>to haunt one of our clients.</b></p> <p>10       <b>Q</b> And you mentioned that the goal is to get</p> <p>11 <b>counsel to meet the client before the preliminary hearing;</b></p> <p>12 <b>why is that the goal?</b></p> <p>13       <b>A</b> Well, at the preliminary hearing, although we</p> <p>14 <b>would rarely ever have our clients testify at a prelim, we</b></p> <p>15 <b>do want to have some idea of what our clients have to say</b></p> <p>16 <b>about the situation before we go into a hearing because</b></p> <p>17 <b>also, a lot of times we don't have any discovery before we</b></p> <p>18 <b>go into a preliminary hearing. The only thing we have to</b></p> <p>19 <b>base off what we are going to prepare is what our clients</b></p> <p>20 <b>have to say.</b></p> <p>21       <b>Q</b> And is -- are there cases where you're not</p> <p>22 <b>able to meet with the client before the preliminary</b></p> <p>23 <b>hearing?</b></p> <p>24       <b>A</b> Like I said, especially with those that aren't</p> <p>25 <b>incarcerated, yeah, that happens a lot. You know, we try</b></p>
<p style="text-align: right;">Page 18</p> <p>1       <b>Q</b> Where would that take place?</p> <p>2       <b>A</b> Well, that would depend. If the client is</p> <p>3 <b>incarcerated, it would take place at the jail. If they are</b></p> <p>4 <b>not incarcerated, that meeting sometimes doesn't take place</b></p> <p>5 <b>at all because the client -- well, we basically have to</b></p> <p>6 <b>rely on the clients to contact us to schedule a meeting.</b></p> <p>7 <b>We just don't have the time track people down. A lot of</b></p> <p>8 <b>times that initial contact information we get on the</b></p> <p>9 <b>application changes quickly. So even if we tried to</b></p> <p>10 <b>contact them at that address or that phone number, a lot of</b></p> <p>11 <b>times it's not good anymore. So for the most part that</b></p> <p>12 <b>initial meeting is really usually with incarcerated</b></p> <p>13 <b>clients.</b></p> <p>14       <b>Q</b> So in a criminal process, when does that</p> <p>15 <b>initial meeting occur? Is it before arraignment? Before</b></p> <p>16 <b>initial appearance?</b></p> <p>17       <b>A</b> Ideally, it happens within a week of them</p> <p>18 <b>getting the file. That doesn't always happen because a lot</b></p> <p>19 <b>of times they are in court every day of the week. But</b></p> <p>20 <b>definitely we try to make sure that it happens prior to the</b></p> <p>21 <b>preliminary hearing. You asked about arraignment; I will</b></p> <p>22 <b>just say most of the time in the counties we handle,</b></p> <p>23 <b>especially in Greene County on felonies, they will have</b></p> <p>24 <b>been arraigned before we are ever in the case.</b></p> <p>25       <b>Q</b> Are there any negative consequences to</p>	<p style="text-align: right;">Page 20</p> <p>1 to rush and have a quick meeting out in the hall if they</p> <p>2 are not incarcerated and they haven't scheduled an</p> <p>3 appointment beforehand, but those are rushed and they are</p> <p>4 not very meaningful conversations. With those in custody,</p> <p>5 I think for the most part, we succeed in seeing them before</p> <p>6 the preliminary hearing.</p> <p>7       <b>Q</b> What happens after the preliminary hearing?</p> <p>8 <b>Actually, strike that. What happens at the preliminary</b></p> <p>9 <b>hearing?</b></p> <p>10       <b>A</b> Well, when one of attorneys comes in for a</p> <p>11 <b>preliminary hearing, first thing they would do is check to</b></p> <p>12 <b>see if the State is prepared. Do they have the witnesses</b></p> <p>13 <b>that they need to proceed. If they don't, then the next</b></p> <p>14 <b>step is we are asking for the case to be dismissed. If</b></p> <p>15 <b>they do have the witnesses that they need, then the next</b></p> <p>16 <b>thing we do is ask if there is any kind of offer on the</b></p> <p>17 <b>case. If there is an offer, with then meet with the</b></p> <p>18 <b>client. Let them relay that offer to them. Then the</b></p> <p>19 <b>attorney and the client would discuss whether or not to</b></p> <p>20 <b>have the preliminary hearing or whether they should waive</b></p> <p>21 <b>the preliminary hearing based upon that offer.</b></p> <p>22       <b>Q</b> In your experience do you have adequate time</p> <p>23 <b>to prepare for a preliminary hearings?</b></p> <p>24       <b>A</b> That's hard to say. I think probably for our</p> <p>25 <b>complex cases, no; for others, probably. I mean,</b></p>

5 (Pages 17 to 20)

<p style="text-align: right;">Page 21</p> <p>1 considering.</p> <p>2 <b>Q Why would it differ?</b></p> <p>3 A Because just the lack of time available and it</p> <p>4 takes more time to prepare for any stage of proceeding on a</p> <p>5 complex case and time is a precious commodity that we have</p> <p>6 very little of in the public defender business.</p> <p>7 <b>Q What typically happens after the preliminary</b></p> <p>8 <b>hearing?</b></p> <p>9 A Well, if the State has been able to either --</p> <p>10 if we have waived the preliminary hearing or the if State</p> <p>11 has shown probable cause then the case would proceed on to</p> <p>12 circuit court for arraignment.</p> <p>13 <b>Q I'm going to step back from the criminal</b></p> <p>14 <b>process for a minute. Let's go back to client contact.</b></p> <p>15 <b>You mentioned that in your experience it's typically easier</b></p> <p>16 <b>to contact clients who are incarcerated. Where does that</b></p> <p>17 <b>client contact take place?</b></p> <p>18 A Can you be more specific?</p> <p>19 <b>Q Where does the first time meeting with an</b></p> <p>20 <b>incarcerated client take place?</b></p> <p>21 A Well, it would take place at the jail and we</p> <p>22 have meeting rooms at the jail. Now, that -- for Greene</p> <p>23 County, that's always the case that it would take place at</p> <p>24 the jail, that first meeting. And it's easy to have that</p> <p>25 first -- easier to have that first meeting with them</p>	<p style="text-align: right;">Page 23</p> <p>1 <b>Q Are the rooms in which you meet clients in</b></p> <p>2 <b>Greene and Taney counties confidential?</b></p> <p>3 A Yes.</p> <p>4 <b>Q In your opinion, do you have the time you need</b></p> <p>5 <b>to effectively communicate with your clients throughout</b></p> <p>6 <b>their cases?</b></p> <p>7 A No.</p> <p>8 <b>Q Why do you say that?</b></p> <p>9 A Client communication is an area where we have</p> <p>10 constant downfall. And as a supervisor, I get the majority</p> <p>11 of the complaint letters I get from clients all stems from</p> <p>12 lack of communication. Once again, most of our attorneys,</p> <p>13 they are in court Monday through Friday. As best as I try</p> <p>14 to assign cases and try to work out some sort of system</p> <p>15 where they will have a day in the office or a day to go to</p> <p>16 the jail. Inevitably with the number of judges courts we</p> <p>17 have here, it seems like they are in court everyday no</p> <p>18 matter what we do. We have worked with the jails to try to</p> <p>19 extend visiting hours and we have had some success with</p> <p>20 that. It used to be in Greene County they had visiting</p> <p>21 hours only from 8:00 to 11:00 in the morning and then 1:00</p> <p>22 to 4:00 in the afternoon. So all the times they were in</p> <p>23 court, it made it impossible. We have gotten that extended</p> <p>24 now all the way from 8:00 solidly through 6:00 p.m. So</p> <p>25 they are able to, you know, during lunch or later in the</p>
<p style="text-align: right;">Page 22</p> <p>1 because they are almost always at our Greene County jail</p> <p>2 prior to the preliminary hearing. Now, later on, that gets</p> <p>3 more difficult and that's not always the case because the</p> <p>4 Greene County jail is -- well, we are told it's</p> <p>5 overcrowded. So inmates get farmed out to counties</p> <p>6 sometimes two hours away. But generally speaking, prior to</p> <p>7 the preliminary hearing, they are here. Christian and</p> <p>8 Taney County; Taney County, it's easier. Yeah, they are</p> <p>9 always there in the jail. There are meeting rooms there.</p> <p>10 It's easy to see them. Christian County has been a very</p> <p>11 difficult place to get our jail visits done. They had one</p> <p>12 small meeting room at that jail that really wasn't very</p> <p>13 private. It was difficult to communicate with the clients.</p> <p>14 They -- I had a meeting with the sheriff. They had two</p> <p>15 rooms over at the courthouse that they cleaned out and made</p> <p>16 available for our attorneys to visit privately with</p> <p>17 clients, but we have to rely on a bailiff being available.</p> <p>18 So if courts going on in every one of the courtrooms, they</p> <p>19 can't do a visit. And if the rooms are being used, they</p> <p>20 can't have a visit. So it does get difficult there.</p> <p>21 <b>Q So you mentioned the rooms aren't that private</b></p> <p>22 <b>in Christian County?</b></p> <p>23 A The one over at the jail --</p> <p>24 <b>Q At the jail.</b></p> <p>25 A -- wasn't, yes.</p>	<p style="text-align: right;">Page 24</p> <p>1 afternoon or right after they get out of court go and do</p> <p>2 some of those visits. But even at that, when you have got</p> <p>3 the majority of your clients are incarcerated, you just</p> <p>4 can't get them all seen every month. So, yeah, no, there</p> <p>5 is not enough time to communicate with folks.</p> <p>6 <b>Q What are the negative consequences of not</b></p> <p>7 <b>having enough time to communicate with your clients?</b></p> <p>8 A First and foremost a poor attorney-client</p> <p>9 relationship. It suffers right off the bat. Other</p> <p>10 problems is being able to properly prepare the case. To be</p> <p>11 able to know, you know, what's the right avenue to take.</p> <p>12 Is this a case we need to negotiate. Is this a case we</p> <p>13 need to take to trial. Being able to reasonably explain</p> <p>14 matters to your clients so that they can make an informed</p> <p>15 decision about things about whether to plead or whether to</p> <p>16 take an offer. Whether -- if they are going to trial,</p> <p>17 whether or not to testify. The majority of our clients are</p> <p>18 uneducated. A lot of them have difficulty reading and</p> <p>19 writing. Many of them have mental health issues. It takes</p> <p>20 so much more time to explain complex legal matters to them.</p> <p>21 Sometimes yes need to reexplain, reexplain, and reexplain</p> <p>22 to them and they deserve that kind of attention and they do</p> <p>23 not -- they do not get it.</p> <p>24 <b>Q Without getting into specifics or compromising</b></p> <p>25 <b>attorney-client privilege, can you think of a time when a</b></p>

6 (Pages 21 to 24)



<p style="text-align: right;">Page 25</p> <p>1 representation of a client in your office was hampered by</p> <p>2 lack of communication?</p> <p>3 A Yeah.</p> <p>4 Q Could you elaborate being as vague as you feel</p> <p>5 necessary to protect the privilege?</p> <p>6 A I mean, there is just -- it's -- there are</p> <p>7 numerous. I'm trying to be general and it stems more from</p> <p>8 me knowing through the letters I get from clients and then</p> <p>9 having to talk with the attorneys and understanding. You</p> <p>10 know, sometimes there have been issues where clients have</p> <p>11 pled guilty and not fully understood what was in the plea</p> <p>12 agreement. Not understood the conditions that were going</p> <p>13 to be on them. Not understanding some of the collateral</p> <p>14 consequences of that plea. Especially with sex offenses;</p> <p>15 if that's not fully explained to them, they are devastated</p> <p>16 when they find out some of the things that go along with</p> <p>17 pleading to a sex offense.</p> <p>18 Q What are some of those collateral</p> <p>19 consequences?</p> <p>20 A Well, now would be lifetime supervision,</p> <p>21 lifetime GPS monitoring, registering as a sex offender for</p> <p>22 the rest of your life.</p> <p>23 Q I'm handing you a copy of an exhibit that was</p> <p>24 previously marked Petsch Exhibit 1. I'm not going to</p> <p>25 remark that. Can you just take a minute and look that</p>	<p style="text-align: right;">Page 27</p> <p>1 ask the court reporter to mark Exhibit 48. Can you just</p> <p>2 take a minute to look that over.</p> <p>3 A Sure. Did you want me to review the whole</p> <p>4 thing or just the client counseling section?</p> <p>5 Q Just the client counseling section is fine.</p> <p>6 A Okay.</p> <p>7 Q Do you recognize this document?</p> <p>8 A Yes.</p> <p>9 Q What is it?</p> <p>10 A It is a performance evaluation form that we</p> <p>11 use for promotions. This one was written out by me</p> <p>12 concerning an employee named Dawn Calvin.</p> <p>13 Q Who is Dawn Calvin?</p> <p>14 A Dawn Calvin is an assistant public defender</p> <p>15 with the Springfield trial office.</p> <p>16 Q At the time you prepared this document, how</p> <p>17 long had she been a public defender?</p> <p>18 A This would have been for her promotion to APD</p> <p>19 2, so she would have been with us a year.</p> <p>20 Q Could you read for the record the box starting</p> <p>21 "comments" or it says, "in reviewing her files."</p> <p>22 A Yes. "In reviewing her files, it appeared</p> <p>23 that for the six months or so Dawn did quite well at</p> <p>24 staying close to guidelines for client contact with her</p> <p>25 incarcerated clients. During that time, she was being</p>
<p style="text-align: right;">Page 26</p> <p>1 over?</p> <p>2 A Sure.</p> <p>3 Q Do you recognize this document?</p> <p>4 A No.</p> <p>5 Q Can you tell me what it appears to be?</p> <p>6 A It appears to be an e-mail that was sent out</p> <p>7 by Joel Elmer to -- I'm assuming all of what would have</p> <p>8 been at the time the assistant public defenders in the</p> <p>9 Kansas City trial office.</p> <p>10 Q And do you see the first sentence in that</p> <p>11 e-mail?</p> <p>12 A Yes.</p> <p>13 Q Could you read it for the record?</p> <p>14 A "As you know, you are to have contact with</p> <p>15 trial caseload clients within seven days of assignment and</p> <p>16 thereafter at least every 30 days."</p> <p>17 Q Does that statement reflect your understanding</p> <p>18 of client contact guidelines in the MSPD?</p> <p>19 A Yes.</p> <p>20 Q Is that still the guideline?</p> <p>21 A Yes.</p> <p>22 Q And in your opinion, are attorneys in your</p> <p>23 office able to meet those guidelines routinely?</p> <p>24 A More often than not, no.</p> <p>25 Q I'm handing you a document that I'm going to</p>	<p style="text-align: right;">Page 28</p> <p>1 assigned misdemeanors and PV's only in Greene County. When</p> <p>2 she was added to the C,D felony rotation and her caseload</p> <p>3 began to rise, as well as her number of incarcerated</p> <p>4 clients, she encountered more difficulty in keeping up with</p> <p>5 client contact. The worse instance of this I saw was a</p> <p>6 case where initial contact at the jail did not occur until</p> <p>7 102 days. There were short visits before court appearances</p> <p>8 at court. Also, it was noted in that file that she</p> <p>9 attempted a jail visit 30 days in, but client had been sent</p> <p>10 to another facility due to overcrowding. Regardless,</p> <p>11 further attempts should have been made to visit client</p> <p>12 sooner. When I met with Dawn to discuss this, she agreed</p> <p>13 this is an area she needs to improve on. She brought with</p> <p>14 her a list of her incarcerated clients she had created that</p> <p>15 she was now using to keep track of their last visit and</p> <p>16 when another was needed. She currently has 34 clients in</p> <p>17 custody. We also talked about maintaining control during</p> <p>18 client meetings. She usually lets the client talk as long</p> <p>19 as they want at every meeting, which means most of her jail</p> <p>20 visits are 45 minutes or longer each which make it</p> <p>21 difficult to get more people seen. For out-of-custody</p> <p>22 clients, she briefly meets with them at their first court</p> <p>23 dates and ask them to call and schedule an office visit.</p> <p>24 For the half or so that do, Dawn lets the clerks know when</p> <p>25 she is available and they schedule those appointments. For</p>

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<p style="text-align: right;">Page 29</p> <p>1 the half or so that don't call, Dawn tries to reach out to</p> <p>2 them by phone. There were notes in several of her files</p> <p>3 detailing contact with the client's family members."</p> <p>4 <b>Q So going back to the beginning of this comment</b></p> <p>5 <b>box, you note that Ms. Calvin was able to maintain client</b></p> <p>6 <b>contact when she was assigned misdemeanors and PV's only in</b></p> <p>7 <b>Greene County; Is it that accurate?</b></p> <p>8 A Yes.</p> <p>9 <b>Q You say that changed once she was added to the</b></p> <p>10 <b>C,D felony rotation and her caseload began to rise. Why</b></p> <p>11 <b>would that make it more difficult for a defender to</b></p> <p>12 <b>maintain client contact?</b></p> <p>13 A Misdemeanors and probation violations -- well,</p> <p>14 I should say just misdemeanors. Misdemeanors, most of</p> <p>15 those clients are out of custody. Once you get into C, D</p> <p>16 felony rotation, much more -- many more of your clients are</p> <p>17 actually going to be incarcerated. Also, you're going to</p> <p>18 be in court more often once you're added to felony rotation</p> <p>19 because going to the felony rotation doesn't mean she</p> <p>20 stopped getting misdemeanors and probation violations. She</p> <p>21 was still getting those. It's just now she was added into</p> <p>22 that rotation. So more court appearances, less time to get</p> <p>23 over to the jail, more clients who are in jail. So it does</p> <p>24 make it more difficult. I believe when we started Dawn</p> <p>25 out -- being a larger office we can do this sometimes -- we</p>	<p style="text-align: right;">Page 31</p> <p>1 overcrowding."</p> <p>2 A Yes.</p> <p>3 <b>Q Is that what you mentioned before that in</b></p> <p>4 <b>Christian County, clients are sent to other jails or is</b></p> <p>5 <b>that frequent in any jail?</b></p> <p>6 A It's mainly actually in Greene County. Now, I</p> <p>7 will say Christian County just started doing that.</p> <p>8 <b>Q Okay.</b></p> <p>9 A But I think the majority of clients that they</p> <p>10 are farming out they are actually sending down to the Taney</p> <p>11 County jail which is a jail, you know, it's a county that</p> <p>12 we cover so it's not as difficult to see them. But it does</p> <p>13 add for an increased trip for those attorneys that are</p> <p>14 assigned to Christian County because Taney County is</p> <p>15 further away.</p> <p>16 <b>Q How far away is it?</b></p> <p>17 A Round trip to Forsythe from our office here</p> <p>18 is, I believe, 94 miles</p> <p>19 <b>Q And would you say that based on what you have</b></p> <p>20 <b>written here it looks like Ms. Calvin went to the jail and</b></p> <p>21 <b>learned that her client had been moved somewhere else?</b></p> <p>22 A Yes.</p> <p>23 <b>Q Does that happen frequently when clients are</b></p> <p>24 <b>moved?</b></p> <p>25 A Used to happen all the time. Anymore, it</p>
<p style="text-align: right;">Page 30</p> <p>1 started her out basically at a zero caseload and she was</p> <p>2 able to build it up. So, yeah, once we got into the C,D</p> <p>3 felony rotation, it made it much more difficult because</p> <p>4 also the number of cases she was handling was going up as</p> <p>5 well.</p> <p>6 <b>Q So once she reached a caseload more typical of</b></p> <p>7 <b>attorneys in your office, it became difficult for her to</b></p> <p>8 <b>maintain client contact?</b></p> <p>9 A Correct.</p> <p>10 <b>Q You noted in this comment box that the worse</b></p> <p>11 <b>instance of this I saw was a case where initial contact at</b></p> <p>12 <b>the jail did not occur until 102 days. Would you describe</b></p> <p>13 <b>that as aberrational, occasional, routine?</b></p> <p>14 A 102 days would be aberrational, especially for</p> <p>15 initial contact client. Let me add that.</p> <p>16 <b>Q What was the reason for the 102 days before</b></p> <p>17 <b>the initial contact, if you know?</b></p> <p>18 A This may have been -- I don't recall off the</p> <p>19 top of my head, but considering something else I added</p> <p>20 there right after that. This may have been one of those</p> <p>21 rare instances where the jail had shipped them out to</p> <p>22 another facility right away once they were incarcerated.</p> <p>23 <b>Q And you noted that later in this box it says,</b></p> <p>24 <b>"Also it noted in that file she attempted jail visit 30</b></p> <p>25 <b>days in but client had been sent to another facility due to</b></p>	<p style="text-align: right;">Page 32</p> <p>1 seems because of that, our attorneys have -- we have been</p> <p>2 asking the jail to send us a census each morning, which</p> <p>3 they do. So our attorneys have now been looking at that</p> <p>4 census before they go over to the jail to see if they are</p> <p>5 actually there or not or if they have been sent somewhere</p> <p>6 else.</p> <p>7 <b>Q Is that census always accurate?</b></p> <p>8 A For the most part, yeah.</p> <p>9 <b>Q Looking to the second page of this document.</b></p> <p>10 <b>You wrote that you talked with Dawn about maintaining</b></p> <p>11 <b>control during client meetings. She usually lets the</b></p> <p>12 <b>client talk as long as they want at every meeting, which</b></p> <p>13 <b>means most of her jail visits are 45 minutes or longer each</b></p> <p>14 <b>which make it's difficult to get more people seen. So is</b></p> <p>15 <b>it fair to say based on this that you talked about in order</b></p> <p>16 <b>for Ms. Calvin to talk with more of her clients, she would</b></p> <p>17 <b>reduce the amount of time she was spending talking to each</b></p> <p>18 <b>of her clients?</b></p> <p>19 A Yes, but that conversation was focused on</p> <p>20 making sure that the client stayed focused on talking about</p> <p>21 the case as opposed to going off on a tangent and just</p> <p>22 wanting to talk about their family and whatever else.</p> <p>23 Making sure they stayed focused so that those meetings did</p> <p>24 get shorter, yes.</p> <p>25 <b>Q And your ultimate recommendation on this</b></p>

8 (Pages 29 to 32)

<p style="text-align: right;">Page 33</p> <p>1 client counseling factor you had checked the box "ie", 2 which is improvement expected; is that accurate? 3 A Yes. 4 Q So you expected Ms. Calvin to improve her 5 contact with clients? 6 A I do. 7 Q How is Ms. Calvin's performance otherwise? 8 A Very good. 9 Q Was she promoted to the next level? 10 A Yes. 11 Q Would you say her inability to meet your 12 expectations on client contact was caused by any lack in 13 skills in her as an attorney? 14 A Well, because I put improvement expected I 15 would have to say to some degree, yes. She was a brand new 16 attorney. So there was ways that she could improve in that 17 area despite all of the obstacles we have being a public 18 defender. So to some degree, yes, but she has made strides 19 to improve in that area. 20 Q Would you say to any degree this was due to 21 factors not in her control? 22 A Yes. There were some factors that were beyond 23 her control. 24 Q What would those factors be? 25 A Once again, clients that get farmed out making</p>	<p style="text-align: right;">Page 35</p> <p>1 Q How long has he been employed at the MSPD? 2 A Paul, I think he's been with us right at 3 between 15 and 16 years. 4 Q So it's fair to say he's an experienced 5 attorney? 6 A Yes. 7 Q And if you look at the first paragraph "Under 8 description of event or issue," it says "We are conducting 9 performance reviews of all the APD IV's in our office 10 starting with those who have been in that position the 11 longest. Paul is one of our longest tenured fours. Our 12 predominate concern in conducting these reviews are client 13 contact unless we have noticed performance related issues 14 in other areas." Is that statement consistent with your 15 understanding of the purpose of this review with 16 Mr. Duchscherer? 17 A Yes. 18 Q Why was the predominant concern in doing 19 review of APD IV's client contact? 20 A Once somebody is promoted to APD IV, really 21 there is no evaluation that ever occur for the most part, 22 at least that are required. And knowing that client 23 contact is one of our biggest problems, once again we see 24 it all the time in complaint letters from clients. I 25 wanted to address that with some of our attorneys who had</p>
<p style="text-align: right;">Page 34</p> <p>1 it more difficult to get them seen. As her caseload 2 increased, having the time to get over to the jail to see 3 those clients; that sort of thing. 4 Q What about her caseload? 5 A Yeah. As the number of cases increased as 6 well, yes. 7 Q So I'm handing you a document that I'll ask 8 our court reporter to mark Exhibit 49. If you could just 9 take a minute and review that. 10 A Sure. Okay. 11 Q Do you recognize this document? 12 A Yes. 13 Q What it is? 14 A This would be an entry out of our employee 15 performance log. It would have been created by my Deputy 16 District Defender Chris Hatley concerning an assistant 17 public defender for Paul Duchscherer. 18 Q Have you seen this document before? 19 A I reviewed it after briefly after Mr. Hatley 20 wrote it. 21 Q Who is Paul Duchscherer? 22 A He is an APD IV in the Springfield office. 23 Q What is an APD IV? 24 A That is our highest level of promotion for an 25 assistant public defender.</p>	<p style="text-align: right;">Page 36</p> <p>1 not been evaluated in a very long time and making sure that 2 they were seeing their clients as they should be as best as 3 they could possibly be seeing them. 4 Q If you look at the next full paragraph under 5 "counseling." The first sentence says, "In the file 6 reviews I did, there were gaps of 3 months, 3 months, 5 7 months, 6 months, 6 months, 8 months, and even 13 months 8 between qualifying contacts." Do you see that? 9 A Yes. 10 Q What does that mean? 11 A That would mean as Chris reviewed Paul's 12 files, he was looking to see the documented contact in the 13 file. Using our guidelines that the initial contact in 14 seven days and the follow-up contact at least once every 30 15 days; there were gaps longer than that. That's why he is 16 taking note over there. So this would mean -- this would 17 not necessarily mean this all occurred in one file -- but 18 of the files he reviewed, this was at least gaps between 19 visits at the jail for that particular client of that 20 amount of months that he's listed there. 21 Q What is a qualifying contact? 22 A A qualifying contact would actually be a sit 23 down visit over at the jail. Not a quick, here is what's 24 going to happen in court right when they are brought over 25 to the courthouse or a letter. It's a face-to-face sit</p>

9 (Pages 33 to 36)

<p style="text-align: right;">Page 37</p> <p>1 down at the jail contact.</p> <p>2 <b>Q The next sentence says, "I discussed with</b></p> <p>3 <b>David that this method simply is not working and is in</b></p> <p>4 <b>opposition to our guidelines for representation." Would</b></p> <p>5 <b>you agree with that statement.</b></p> <p>6 A I would agree except that he made a mistake</p> <p>7 there and put David a couple times in here. I don't know</p> <p>8 why he had David on the mind, but it should be Paul. But</p> <p>9 other than that, yes, the gist of that I agree with it.</p> <p>10 <b>Q The next sentence says, "I also told him that</b></p> <p>11 <b>given the huge caseloads we understood that every 30 days</b></p> <p>12 <b>may not be attainable." What does that mean?</b></p> <p>13 A This goes back to something I had said to you</p> <p>14 earlier where we kind of -- especially for promotion</p> <p>15 purposes, we kind of fudged those numbers a little bit.</p> <p>16 And our expectations really for promotion and such as been</p> <p>17 had to stretch out beyond that 30 days because we know we</p> <p>18 can't always actually get over there. We expect better</p> <p>19 than some of these gaps that he's mentioned up here, but</p> <p>20 we're not oblivious to the fact that you can't -- might not</p> <p>21 be able to see every one of your incarcerated clients every</p> <p>22 30 days.</p> <p>23 <b>Q Would you say that the issues noted in this</b></p> <p>24 <b>review of Paul applied to other APD IV's or just Paul?</b></p> <p>25 A No, it applied to others. We haven't went</p>	<p style="text-align: right;">Page 39</p> <p>1 hurts in your ability to negotiate with the prosecutor. It</p> <p>2 hurts in a lot of ways.</p> <p>3 <b>Q You started with trust; why is trust important</b></p> <p>4 <b>in the attorney-client relationship in defending an</b></p> <p>5 <b>indigent client?</b></p> <p>6 A Well, because there are times when there is a</p> <p>7 right road and there is a wrong road on a case and how you</p> <p>8 should proceed. If the client doesn't trust you about</p> <p>9 which way you need to go, they might make the wrong choice</p> <p>10 and it will affect them forever.</p> <p>11 <b>Q And how would developing more trust aid in</b></p> <p>12 <b>picking the right road?</b></p> <p>13 A Because if they trust the attorney, then they</p> <p>14 are more likely to listen to them about what the attorney</p> <p>15 thinks they should do in a case.</p> <p>16 <b>Q Can you think of a time where a client not</b></p> <p>17 <b>trusting you or someone in your office hampered your</b></p> <p>18 <b>office's ability to provide effective -- an effective</b></p> <p>19 <b>defense?</b></p> <p>20 A Well, I can think of times where I have seen</p> <p>21 people plead to an offer I didn't think that they should</p> <p>22 take or I thought maybe they should go to trial, but</p> <p>23 because there is a lack of trust, they wanted to go with</p> <p>24 the guarantee in writing.</p> <p>25 <b>Q Turning back to this document, if you go to</b></p>
<p style="text-align: right;">Page 38</p> <p>1 through all of our APD IV reviews yet. But on another one</p> <p>2 that I have done, yes, I have seen similar.</p> <p>3 <b>Q Similar?</b></p> <p>4 A Types of gaps, yes.</p> <p>5 <b>Q And in response to this, Paul suggested that</b></p> <p>6 <b>he could do every 60-day client meetings or could likely do</b></p> <p>7 <b>that; do you see that?</b></p> <p>8 A Yes.</p> <p>9 <b>Q Is there a disadvantage in representing a</b></p> <p>10 <b>client in going from meeting once every 30 days to once</b></p> <p>11 <b>every 60 days?</b></p> <p>12 A Yes.</p> <p>13 <b>Q What disadvantages would there be?</b></p> <p>14 A Once again, I think it hurts your</p> <p>15 attorney-client relationship. If they are not seeing you,</p> <p>16 if you're not responding to their letters, they don't trust</p> <p>17 you. A lot of our clients we already start out with a</p> <p>18 level of distrust because, you know, it gets around hey,</p> <p>19 they are paid by the state. They're in cahoots with the</p> <p>20 prosecution. So we already start out with a lot of times</p> <p>21 with distrust. You can't build trust if you're seeing</p> <p>22 people every 60 days. It also hurts in your ability to</p> <p>23 once again properly inform your client about the decisions</p> <p>24 that they have to make, some life-changing decisions. It</p> <p>25 hurts in your ability to properly prepare the case. It</p>	<p style="text-align: right;">Page 40</p> <p>1 <b>the next paragraph it says, "Christian County is a bit odd</b></p> <p>2 <b>when it comes to client contact. The jail is an absolute</b></p> <p>3 <b>hellhole and they do everything they can to discourage</b></p> <p>4 <b>attorney-client meetings." Can you elaborate on what that</b></p> <p>5 <b>means?</b></p> <p>6 A Well, once again, I didn't write this.</p> <p>7 <b>Q Right.</b></p> <p>8 A But this goes back to I think earlier we were</p> <p>9 discussing the jail situations in the different counties.</p> <p>10 This would have -- this would have -- yeah, this was</p> <p>11 written prior to the meeting I had with the sheriff in</p> <p>12 Christian County where they changed it where they have</p> <p>13 those two rooms now available over at the courthouse for us</p> <p>14 to visit. Yeah, prior to that, it was so difficult to get</p> <p>15 clients seen there. Yeah, if you went over to the jail --</p> <p>16 and I experienced this myself -- where you go over to the</p> <p>17 jail itself to try to see a client and because they are so</p> <p>18 apparently understaffed there, you just wait out in the</p> <p>19 lobby. You know, they would come. They would ask you for</p> <p>20 your bar card. Then they would just disappear and you</p> <p>21 would sit there for a half an hour or 45 minutes just</p> <p>22 waiting on somebody to come back so you could tell them who</p> <p>23 you needed to see. Then you go into this little room</p> <p>24 that's right off the lobby that, once again, is not very</p> <p>25 private. Anybody sitting in the lobby can hear everything</p>

10 (Pages 37 to 40)

<p style="text-align: right;">Page 41</p> <p>1 that's being said and there was only the one room there.</p> <p>2 It's a little metal stool for the attorney to sit on for --</p> <p>3 and same way on the other side through the glass for the</p> <p>4 client. It was difficult to hear through the glass each</p> <p>5 other; there was no phone. It was very problematic.</p> <p>6 <b>Q Are there still difficulties in meeting</b></p> <p>7 <b>clients in jail, either in Christian County or other</b></p> <p>8 <b>counties in Area 31?</b></p> <p>9 A Yes. As I stated earlier in Christian County,</p> <p>10 although they have made some accommodations to make things</p> <p>11 better so that we can see clients, I mean there is still</p> <p>12 problems. Like a bailiff not being available because court</p> <p>13 is in session to bring a client over. If the two rooms --</p> <p>14 there is only two rooms -- and if they are filled up, you</p> <p>15 are out of luck. You can't see somebody. So, yeah, there</p> <p>16 is still issues.</p> <p>17 <b>Q You can put that document to the side for now,</b></p> <p>18 <b>but we will come back to it in a bit. You mentioned</b></p> <p>19 <b>earlier that lack of time can affect the ability to prepare</b></p> <p>20 <b>the case. In what fraction of cases do you typically do a</b></p> <p>21 <b>pretrial investigation?</b></p> <p>22 A I would say -- we talked about this recently</p> <p>23 at a management meeting -- I think we average right around</p> <p>24 maybe 10 percent.</p> <p>25 <b>Q In your opinion, does your office have the</b></p>	<p style="text-align: right;">Page 43</p> <p>1 our client has told us about. So we have had that issue</p> <p>2 before. Once again, this is just going as to</p> <p>3 investigation?</p> <p>4 <b>Q Yes.</b></p> <p>5 A I mean, that would be the main thing I could</p> <p>6 think of.</p> <p>7 <b>Q So due to lack of time, you can think of cases</b></p> <p>8 <b>where not every potential witness has been contacted?</b></p> <p>9 A Yes.</p> <p>10 <b>Q In your opinion, should attorneys generally be</b></p> <p>11 <b>contacting every potential witness in preparing defense?</b></p> <p>12 A Especially the witnesses that our client is</p> <p>13 telling us about that are potential defense witnesses,</p> <p>14 absolutely.</p> <p>15 <b>Q How frequently do you request discovery from</b></p> <p>16 <b>the State?</b></p> <p>17 A We request it on every case.</p> <p>18 <b>Q In your opinion, do the attorneys in your</b></p> <p>19 <b>office have time to effectively review that discovery?</b></p> <p>20 A Depends on the type of case. If we are</p> <p>21 talking about a misdemeanor or probation violation, almost</p> <p>22 never. I would say 95 to 99 percent of the time, that's</p> <p>23 being looked at on the day of the hearing or the trial or</p> <p>24 the day before at best.</p> <p>25 <b>Q And for those misdemeanors and probation</b></p>
<p style="text-align: right;">Page 42</p> <p>1 <b>time and resources to investigate each case in the manner</b></p> <p>2 <b>required?</b></p> <p>3 A I've got two investigators in my office.</p> <p>4 Right now they are able to get everything done that's asked</p> <p>5 of them. Sometimes they need a little extra time. We have</p> <p>6 had to continue some cases because they didn't have enough</p> <p>7 time to look into something. Once again, that's only</p> <p>8 because we are only looking into only 10 percent of our</p> <p>9 cases. If we were to truly investigate all of our cases,</p> <p>10 no. I don't have the support staff for that at all.</p> <p>11 <b>Q Do you think your -- if your office had the</b></p> <p>12 <b>time they would be investigating more than 10 percent of</b></p> <p>13 <b>the cases?</b></p> <p>14 A Yes.</p> <p>15 <b>Q In your opinion what would be a better</b></p> <p>16 <b>percentage or what -- strike that. In your opinion, what</b></p> <p>17 <b>percentage of cases should be investigated to be</b></p> <p>18 <b>providing -- strike that. Let's move on. Can you think of</b></p> <p>19 <b>a time where a specific case was hampered because of the --</b></p> <p>20 <b>strike that. Without getting into specifics or</b></p> <p>21 <b>compromising privilege, can you think of a time where your</b></p> <p>22 <b>representation of a client was hampered by the lack of time</b></p> <p>23 <b>to investigate a case?</b></p> <p>24 A Well, I mean we've had situations where we</p> <p>25 weren't been able to track down all of the witnesses that</p>	<p style="text-align: right;">Page 44</p> <p>1 <b>violations cases, is jail a potential consequence of a</b></p> <p>2 <b>conviction or plea?</b></p> <p>3 A Absolutely.</p> <p>4 <b>Q What about felony cases?</b></p> <p>5 A Felony cases, I think that gets reviewed much</p> <p>6 more. And once again, depending on the complexity of the</p> <p>7 case or the severity of the case, it gets more time.</p> <p>8 That's the real problem here is, you know, I think at least</p> <p>9 in our office, I think people that are charged with crimes</p> <p>10 where they're facing potential life sentence, they get a</p> <p>11 lot of attorney time and their cases are really looked into</p> <p>12 and looked through. But to do that on all of those cases</p> <p>13 because we handle a lot of A and B felonies, a lot of</p> <p>14 people that are charged as prior and persistent offenders;</p> <p>15 in doing that, it leaves little to no time for all of those</p> <p>16 folks that are charged with a lower grade felony or those</p> <p>17 charged with PV's or misdemeanors.</p> <p>18 <b>Q So you would separate the ability to review</b></p> <p>19 <b>discovery in A and B felonies from C and D felonies?</b></p> <p>20 A I would say so, yes.</p> <p>21 <b>Q Do you think attorneys in your office have</b></p> <p>22 <b>sufficient time to review discovery in C and D felony</b></p> <p>23 <b>cases?</b></p> <p>24 A Once again, it depends on the type of case</p> <p>25 because there are C and D sex offenses I think that more</p>

11 (Pages 41 to 44)

<p style="text-align: right;">Page 45</p> <p>1 time is definitely spent on those. But if you're talking</p> <p>2 about a C or D stealing or tampering; it's probably given</p> <p>3 one quick reading and that's about it.</p> <p>4 <b>Q How frequently do attorneys in your office</b></p> <p>5 <b>gather information to evaluate whether an expert would be</b></p> <p>6 <b>necessary in the case?</b></p> <p>7 A Can you ask that again?</p> <p>8 <b>Q Sure. How frequently do attorneys in your</b></p> <p>9 <b>office determine whether an expert would be necessary in a</b></p> <p>10 <b>case?</b></p> <p>11 A What do you mean by how often?</p> <p>12 <b>Q Let me rephrase. Do you think the attorneys</b></p> <p>13 <b>in your office have adequate time to consider retaining and</b></p> <p>14 <b>using experts in cases where they would be necessary?</b></p> <p>15 A Well, on the complex cases, yes; other cases,</p> <p>16 no, generally not.</p> <p>17 <b>Q What kinds of cases would there not be</b></p> <p>18 <b>sufficient time?</b></p> <p>19 A Well, certainly if you were thinking of using</p> <p>20 an expert on a misdemeanor, I never see that at all or any</p> <p>21 kind of request there. Once again, a C or D felony that's</p> <p>22 not a sex case; I see it very rarely there too, request for</p> <p>23 funds for experts.</p> <p>24 <b>Q Can you think of a C or D felony where expert</b></p> <p>25 <b>testimony could have been useful or necessary and wasn't</b></p>	<p style="text-align: right;">Page 47</p> <p>1 contact that person to determine what the cost will be.</p> <p>2 And then they will fill out what we call an E-request and</p> <p>3 that will list the expert, the cost, the anticipated start</p> <p>4 date of the service, and then the reason for the request.</p> <p>5 That will be sent to me for approval. If it's under</p> <p>6 \$500.00, then once I've approved it, that's it. If it's</p> <p>7 over \$500.00, then once I've approved it, it goes on up to</p> <p>8 either Ellen Blau or Marshall Plane for approval.</p> <p>9 <b>Q Are there any cases you can think of where an</b></p> <p>10 <b>expense request was rejected?</b></p> <p>11 A Yes.</p> <p>12 <b>Q What would be the reason an expense request is</b></p> <p>13 <b>rejected?</b></p> <p>14 A More often than not it's rejected usually</p> <p>15 because the attorney maybe has not picked the right kind of</p> <p>16 expert and we need to talk about, you know, who maybe might</p> <p>17 be a better expert to use. That might be because of the</p> <p>18 specialty of the expert or sometimes it's because of the</p> <p>19 cost of the expert. Maybe there is somebody closer or</p> <p>20 that -- or doesn't charge such a high price that might be</p> <p>21 the better person to use.</p> <p>22 <b>Q So cost is a factor in determining which</b></p> <p>23 <b>experts to use?</b></p> <p>24 A It can be, yes.</p> <p>25 <b>Q How often do attorneys in your office take</b></p>
<p style="text-align: right;">Page 46</p> <p>1 <b>requested?</b></p> <p>2 A I can't tell you an example of -- no, I can't.</p> <p>3 But I can tell you for instance like a low grade felony</p> <p>4 DWI, I have -- hardly ever do I get request for funds for</p> <p>5 an expert on something like that. But in the one or two</p> <p>6 times I have actually gotten those request and I have</p> <p>7 approved it, it's been to the client's benefit. It worked</p> <p>8 out well for them.</p> <p>9 <b>Q Why would expert evidence be useful in the DWI</b></p> <p>10 <b>case?</b></p> <p>11 A Well, it was a DWI I had pertained to an</p> <p>12 accident and it was -- both of them were. It was as to</p> <p>13 whether or not the intoxication actually played any role in</p> <p>14 it whatsoever.</p> <p>15 <b>Q How is an expert approved for a particular</b></p> <p>16 <b>case? What is the process for that?</b></p> <p>17 A When the attorney determines that they need to</p> <p>18 use an expert or think they need to use an expert; first,</p> <p>19 they will determine what expert they want to use.</p> <p>20 Sometimes that's done by going through our -- we have an</p> <p>21 expert witness database; or, also, sometimes they will go</p> <p>22 on our -- we have a discussion database and they will go on</p> <p>23 there and ask other public defenders around the state, you</p> <p>24 know, who have you used for this type of situation. Once</p> <p>25 they have determined who they want to use, they will</p>	<p style="text-align: right;">Page 48</p> <p>1 <b>depositions in cases?</b></p> <p>2 A You know, I would say we probably -- and</p> <p>3 this -- I'm just ball parking it here, but I would guess it</p> <p>4 probably corresponds pretty close to our percentage that we</p> <p>5 investigate. So I would say around 10 percent of the</p> <p>6 cases.</p> <p>7 <b>Q Do you think attorneys in your office have</b></p> <p>8 <b>sufficient time to take depositions in cases where it would</b></p> <p>9 <b>be necessary?</b></p> <p>10 A It gets difficult to get those scheduled.</p> <p>11 I'll tell you, most of the time those depositions are done</p> <p>12 within a month or two months out from a trial date.</p> <p>13 <b>Q What would be the advantage of doing a</b></p> <p>14 <b>deposition more than a month or two before trial?</b></p> <p>15 A Well, people's memories fail. So closer in</p> <p>16 time sometimes is better, depending on who that witness is,</p> <p>17 whether you really want a fresh memory or not. And also</p> <p>18 whether or not you can even locate a witness too.</p> <p>19 Sometimes witnesses disappear on you.</p> <p>20 <b>Q This might be difficult to answer given --</b></p> <p>21 <b>knowing the absence of the negative, but can you think of a</b></p> <p>22 <b>case where a deposition was not taken in a case where it</b></p> <p>23 <b>would have been useful to have taken one?</b></p> <p>24 A Nothing comes to mind right off the bat.</p> <p>25 <b>Q Do you have translators on staff in your</b></p>

12 (Pages 45 to 48)



<p style="text-align: right;">Page 49</p> <p>1 office?</p> <p>2 A No.</p> <p>3 Q What do you do when a client doesn't speak</p> <p>4 English.</p> <p>5 A We have to hire a translator.</p> <p>6 Q How do you hire a translator?</p> <p>7 A It's similar to the way we do with the</p> <p>8 experts. Our attorney has to fill out an expense request</p> <p>9 and I have to approve it.</p> <p>10 Q Are there difficulties in communicating with</p> <p>11 clients who do not speak English?</p> <p>12 A Sure.</p> <p>13 Q Are any of those difficulties related to the</p> <p>14 time it takes to find a translator?</p> <p>15 A Not the time that it takes to find the</p> <p>16 translator, but then the time to be able to coordinate your</p> <p>17 schedule with that translator and get over to the jail, and</p> <p>18 the increased time of that jail visit because it's going to</p> <p>19 take twice as long as an ordinary jail visit.</p> <p>20 Q Roughly, what percentage of your clients do</p> <p>21 not speak English?</p> <p>22 A I don't have any idea.</p> <p>23 Q You mentioned earlier that occasionally</p> <p>24 attorneys in your office seek continuances. Could you</p> <p>25 elaborate a little more on why an attorney would seek a</p>	<p style="text-align: right;">Page 51</p> <p>1 A I'd say we could probably fall around that 10</p> <p>2 percent number. Depending on what -- I mean, bond request</p> <p>3 and such are filed, you know, formerly. But as far as a</p> <p>4 significant pretrial motion, like a motion to suppress,</p> <p>5 yeah, I would say around 10 percent.</p> <p>6 Q In your opinion should there be more</p> <p>7 suppression motions -- or more pretrial motions like</p> <p>8 suppression motions filed in cases in your district?</p> <p>9 A Yes.</p> <p>10 Q Why aren't more being filed?</p> <p>11 A Once again, I think it's a matter of time and</p> <p>12 number of cases and being able to properly look through</p> <p>13 everything and prepare.</p> <p>14 Q Can you think of a time where a case in your</p> <p>15 office could have benefited from filing a pretrial motion</p> <p>16 but a lack of time to prepare hampered the ability to file?</p> <p>17 A That would be one of those things where unless</p> <p>18 I read every case's discovery in our office, there is just</p> <p>19 no way for me to answer that.</p> <p>20 Q Sure. If you could turn back to the Exhibit</p> <p>21 49 the Paul Duchscherer evaluation.</p> <p>22 A Yes.</p> <p>23 Q If you flip to the second page.</p> <p>24 A Yes.</p> <p>25 Q And as you previously noted, the evaluation</p>
<p style="text-align: right;">Page 50</p> <p>1 continuance in a case?</p> <p>2 A Usually it's because they're not prepared.</p> <p>3 Q Why wouldn't they be prepared?</p> <p>4 A Because they haven't had time to prepare.</p> <p>5 Q Do attorneys in your district regularly seek</p> <p>6 continuances?</p> <p>7 A Regularly? It happens a lot. It would happen</p> <p>8 more frequently in our areas, our jurisdictions, if judges</p> <p>9 pushed harder for cases to go to trial quickly, but they</p> <p>10 don't. It's not uncommon for us to get a trial date set a</p> <p>11 year out from the first pretrial conference. So -- and</p> <p>12 very often, that's not the No. 1 case on that jury trial</p> <p>13 week; there would be 30 or 40 other cases. So it might not</p> <p>14 even go that month when it's set that far out. So we would</p> <p>15 have to ask for them a lot more than we do, but because of</p> <p>16 how cases proceed here, we don't have to ask for them as</p> <p>17 much as they might have to elsewhere.</p> <p>18 Q Are there negative consequences in</p> <p>19 representing a client to pushing the trial out further with</p> <p>20 a continuance or due to scheduling?</p> <p>21 A Well, if the client is out of custody they</p> <p>22 usually don't mind at all; but when they are in custody,</p> <p>23 yeah, absolutely. You have extended their jail stay.</p> <p>24 Q How frequently do attorneys in your office</p> <p>25 file pretrial motions?</p>	<p style="text-align: right;">Page 52</p> <p>1 flips between David and Paul at some points, but I will</p> <p>2 read it as it's written here. It says, "David wishes he</p> <p>3 had more time available for creative motion practice. His</p> <p>4 caseload and busy court schedule usually only allow for the</p> <p>5 doctoring of our boilerplate motions. He also only has</p> <p>6 time to prepare and submit suggestions in support when</p> <p>7 specifically requested by the judge." So would you say</p> <p>8 that that wish to have more time available for creative</p> <p>9 motion practice is unique to Paul or David or is that</p> <p>10 something that applies more generally in your office?</p> <p>11 A No, I would say that applies to most of the</p> <p>12 folks in our office. I've got at least a couple of</p> <p>13 attorneys that they do a lot more of the suggestions. They</p> <p>14 do a lot more writing of writs and such, but I mean, they</p> <p>15 are working all the time. I mean, I get to the office</p> <p>16 early and, you know, they beat me there. They put in a lot</p> <p>17 of hours to do that.</p> <p>18 Q What time do you get into the office?</p> <p>19 A I generally get in around 7:00 a.m.</p> <p>20 Q The second sentence referring to the doctoring</p> <p>21 of our boilerplate motions; do you know what that means?</p> <p>22 A Yeah. We have a motion database that we keep</p> <p>23 and for things like -- there is things like motions to</p> <p>24 suppress on there. A lot of our attorneys rely -- a lot of</p> <p>25 them rely strictly on that and there is little variation or</p>

<p style="text-align: right;">Page 53</p> <p>1 case-specific information that gets put into those. They</p> <p>2 just get filed.</p> <p>3 <b>Q In your opinion, does that hamper the ability</b></p> <p>4 <b>to effectively defend clients?</b></p> <p>5 A Well, it probably puts a judge on notice that</p> <p>6 you haven't really maybe looked into it as much as you</p> <p>7 should. I think if you've got more case-specific like on a</p> <p>8 motion to suppress, you've also educated the judge before</p> <p>9 you ever come in for the hearing at all. I think that's</p> <p>10 beneficial to the client.</p> <p>11 <b>Q It says, "In addition to the boilerplate</b></p> <p>12 <b>motion," it also says, "he only has time to prepare and</b></p> <p>13 <b>submit suggestions in support when specifically requested</b></p> <p>14 <b>by the judge." Do you know what that means?</b></p> <p>15 A Yes. Sometimes judges when you file a Motion</p> <p>16 to Suppress or something similar, sometimes the judges will</p> <p>17 ask for written suggestions from both the State and the</p> <p>18 defense. At least one of our attorneys I can think of</p> <p>19 likes to request -- whether or not -- this is one of the</p> <p>20 ones I was talking about a little bit ago -- request to</p> <p>21 file suggestions regardless of whether the judge has asked</p> <p>22 for it or not. And what Chris is writing here about Paul</p> <p>23 is that, you know, he just doesn't have the time to do that</p> <p>24 at all as far as requesting to do that unless the judge has</p> <p>25 specifically ordered it.</p>	<p style="text-align: right;">Page 55</p> <p>1 court could possibly not grant you relief on that. For</p> <p>2 instance, say somebody went to trial, lost, and during</p> <p>3 their appeal there was this discovery that you didn't get</p> <p>4 all the reports. The appellate court might say too bad so</p> <p>5 sad. You didn't file your discovery request.</p> <p>6 <b>Q Is it -- in your opinion, is Paul the only</b></p> <p>7 <b>attorney in your office to have filed late discovery</b></p> <p>8 <b>request?</b></p> <p>9 A Ever, no. I mean, but once again, I mean, the</p> <p>10 way our office is set up, they don't have to file it</p> <p>11 themselves if they'll just follow the procedure I have set</p> <p>12 up in the office.</p> <p>13 <b>Q Why would someone not follow the procedure?</b></p> <p>14 A Once again, it goes to lack of time and</p> <p>15 just -- Paul was assigned to Christian County as it states</p> <p>16 there. They would have -- at that time, they would had</p> <p>17 three Law Days a month. It would not be unusual for them</p> <p>18 to be there on those Law Days from like 9:00 a.m. until</p> <p>19 10:00 at night. And so then you come back in on Friday and</p> <p>20 there would be -- there is another court date on Friday for</p> <p>21 the changes of judge. Once again, just as things get</p> <p>22 going, the number of arraignments that he was handling,</p> <p>23 it's possible he just forgot to get some into the basket</p> <p>24 for our office assistant to get done because he was trying</p> <p>25 to take care of all these other things he was trying to</p>
<p style="text-align: right;">Page 54</p> <p>1 <b>Q Why would an attorney want a request to file</b></p> <p>2 <b>suggestions even if the judge doesn't ask for them?</b></p> <p>3 A Gives you one more whack at it in explaining</p> <p>4 why the judge should rule in your favor.</p> <p>5 <b>Q The next sentence says, "I noticed while doing</b></p> <p>6 <b>the file reviews that the request for discovery was either</b></p> <p>7 <b>filed late or not at all in several cases." Do you know</b></p> <p>8 <b>what that means?</b></p> <p>9 A Yes.</p> <p>10 <b>Q What does that mean in your opinion?</b></p> <p>11 A Well, that means a request for discovery in a</p> <p>12 felony case should always be filed within 20 days from</p> <p>13 arraignment, circuit court arraignment. We have a method</p> <p>14 set up in the office where our office assistants will</p> <p>15 actually file those for the attorneys. They just have to</p> <p>16 get the arraignment paperwork to her to get that filed and</p> <p>17 that wasn't done here.</p> <p>18 <b>Q And when you say they have to be filed, is</b></p> <p>19 <b>that an internal guideline or is that a court rule?</b></p> <p>20 A It's Supreme Court rule as to when that needs</p> <p>21 to be filed.</p> <p>22 <b>Q What are the consequences of filing a late</b></p> <p>23 <b>request for discovery?</b></p> <p>24 A Well, potentially if some discovery was not</p> <p>25 turned over and you found out about it after the fact, the</p>	<p style="text-align: right;">Page 56</p> <p>1 take care of.</p> <p>2 <b>Q How often do cases go to trial in your office?</b></p> <p>3 A Not as often as they should, but I can't give</p> <p>4 you an exact number of how many jury trials we have had</p> <p>5 over like the last year or so. I don't know.</p> <p>6 <b>Q Why do you say they don't go to trial as often</b></p> <p>7 <b>as they should?</b></p> <p>8 A I just know we don't go to trial as often as I</p> <p>9 think we should. For the number of cases that come through</p> <p>10 our office, yeah, there should be more. There should be</p> <p>11 more trials.</p> <p>12 <b>Q In your opinion, why aren't there more trials?</b></p> <p>13 A Once again, I think it goes to having the time</p> <p>14 to prepare.</p> <p>15 <b>Q If these cases -- if not enough cases are</b></p> <p>16 <b>going to trial, is it because they are being delayed or is</b></p> <p>17 <b>it because they are being resolved through guilty pleas or</b></p> <p>18 <b>other methods?</b></p> <p>19 A I think a lot of times they are guilty pleas.</p> <p>20 <b>Q So in your opinion, there are cases that</b></p> <p>21 <b>should -- you can think of cases that should be going to</b></p> <p>22 <b>trial, but are being resolved through guilty pleas?</b></p> <p>23 A I'm just talking statistically. I can't think</p> <p>24 of an exact case where -- because if I knew of an exact</p> <p>25 case, I would talk with that attorney and say no, we need</p>

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<p style="text-align: right;">Page 57</p> <p>1 to go trial. I just know statistically we have very few 2 trials for the number of cases that we have.</p> <p>3 <b>Q In your opinion, do attorneys in your office</b> 4 <b>have sufficient time to prepare for trial?</b></p> <p>5 A No.</p> <p>6 <b>Q Why not?</b></p> <p>7 A Once again, being in court five days a week, 8 to trying -- when they are not in court to get some of 9 these jail visits done that I'm hampering them about they 10 need to go get done, office appointments for those clients 11 that are out of custody. It just doesn't leave a lot of 12 time.</p> <p>13 <b>Q Has an attorney in your office ever waived an</b> 14 <b>opening or closing argument at trial?</b></p> <p>15 A I can't think of anybody that's ever waived a 16 closing argument. I believe we had an instance at least 17 once there is one time I can think of where they held off 18 on their opening until the State had rested, but yes.</p> <p>19 <b>Q What goes into preparing for trial?</b></p> <p>20 A Well, as we have talked about before, 21 utilizing your investigator to track down any possible 22 defense witnesses, speak to them, look through and see if 23 first of all if there are also any pretrial motions that 24 need to be filed, depositions of the State's witnesses 25 possibly, preparing your client for the trial, deciding</p>	<p style="text-align: right;">Page 59</p> <p>1 all their other clients at that time, at least in that 2 period of time in that they are prepping.</p> <p>3 <b>Q Can you be more specific in how preparing for</b> 4 <b>trial in one case detracts from the ability to represent</b> 5 <b>clients in other cases?</b></p> <p>6 A Well, you have got to find that time to do 7 those depositions that we talked about. You have got to 8 have time to talk with your investigator about what she has 9 been able to -- who she has been able to locate and what 10 those statements are. If those statements are good, asking 11 your investigator to have those witnesses come in, you 12 know, to the office and talk. So you have got to find time 13 for all of this. That means you're not focusing on your 14 other cases and -- because if you're not prepared for 15 trial, you're always on the go for all of these other 16 things you're supposed to be doing for everybody else. So 17 a lot of times our attorneys will cover each other cases 18 when you're prepping. So you basically tune everybody else 19 out. You know that your fellow attorneys in the office 20 will cover your cases for you. If they are covering for 21 you, it's not like you're prepping what needs to be done on 22 those court dates. You're basically just telling that 23 attorney go and tell the judge I'm prepping for trial and 24 punt them and so they just get reset. Nothing is getting 25 done on those cases at all. And also other clients aren't</p>
<p style="text-align: right;">Page 58</p> <p>1 whether or not they are going to testify. If they are 2 going to testify, prepare them for that and for the 3 potential cross examination. Preparing your opening, your 4 closing, your directs, your crosses, preparing voir dire.</p> <p>5 <b>Q In your opinion, do attorneys in your office</b> 6 <b>have time -- adequate time to talk with their clients about</b> 7 <b>testifying and about preparing to testify?</b></p> <p>8 A Excuse me. When you've hit that point of, 9 yes, this is definitely going to be a trial, you know, 10 those cases do get more of our attorney's time and 11 attention. So those conversations I know definitely get 12 had. They do have that conversation with them about 13 whether or not to testify and they usually have at least 14 one conversation with them trying to prep them for that and 15 the cross. But it's usually, I would say probably just one 16 conversation. If they needed more to really talk about it, 17 they probably don't get that.</p> <p>18 <b>Q So in your opinion -- strike that. When an</b> 19 <b>attorney in office -- in your office is preparing for</b> 20 <b>trial, would you say they have adequate time to continue</b> 21 <b>effective representation on their other cases?</b></p> <p>22 A No.</p> <p>23 <b>Q Why not?</b></p> <p>24 A Again, in properly trying to prepare for a 25 trial, it comes at the cost of effective representation for</p>	<p style="text-align: right;">Page 60</p> <p>1 getting seen at the jail too.</p> <p>2 <b>Q So when you say other attorneys in your office</b> 3 <b>cover cases when one attorney is on trial, that's mainly</b> 4 <b>for court appearances and to push those cases down the</b> 5 <b>road?</b></p> <p>6 A Correct.</p> <p>7 <b>Q How much time do you spend working on case</b> 8 <b>before you advise a client on whether to take a guilty</b> 9 <b>plea?</b></p> <p>10 A Me personally?</p> <p>11 <b>Q Yes, you personally.</b></p> <p>12 A I try to spend a significant amount. I can't 13 give you an exact amount of time because every case is 14 different on how much time you really need to do. But once 15 again, I mean, I have a reduced caseload. It's much more 16 difficult for our assistant public defenders in that area.</p> <p>17 <b>Q Do you think your assistant public defenders</b> 18 <b>have sufficient time to advise their clients on pleading</b> 19 <b>guilty?</b></p> <p>20 A Not all the time, no.</p> <p>21 <b>Q What are -- what steps do attorneys in your</b> 22 <b>office take to negotiate pleas for clients?</b></p> <p>23 A The average negotiation, I would say, for most 24 cases -- once again, we are not talking about the complex 25 cases -- I would say most negotiation occurs right on the</p>

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<p style="text-align: right;">Page 61</p> <p>1 date that potentially the client is going to plead guilty.  2 That's when most of the negotiation occurs.  3 <b>Q How are plea offers communicated to clients?</b>  4 A Could you be more specific?  5 <b>Q So if an assistant public defender negotiates</b>  6 <b>a plea or is informed of a plea offer by the DA's office,</b>  7 <b>how would they communicate that to their client?</b>  8 A Well, I mean, if it's occurring in court, they  9 would take them into a conference room -- take their client  10 into a conference room and let them know what that offer is  11 and, you know, have a brief conversation about the ins and  12 outs of that offer and ask them, you know, the client if  13 they have any questions about it. If it occurs outside of  14 the courtroom and the client is incarcerated, we would go  15 over to the jail and let the client know. If they are out  16 of custody, we would try to make contact with the client.  17 That's, as I stated earlier, it's not always easy to do,  18 and relay that offer.  19 <b>Q Without getting into specifics of particular</b>  20 <b>cases, can you think of times where a client could have</b>  21 <b>gotten a better plea deal if the attorney had -- if your</b>  22 <b>attorney had more time or resources to work on that case?</b>  23 A I can't think of an example, no.  24 <b>Q In your opinion do attorneys in your office</b>  25 <b>generally have sufficient time to negotiate plea deals?</b></p>	<p style="text-align: right;">Page 63</p> <p>1 <b>where there was no jail time involved in the plea</b>  2 <b>agreement?</b>  3 A An agreement with the State that we would not  4 take cases -- we already don't. Unless jail time is a  5 possibility, we don't take any of those cases.  6 <b>Q Let me be more specific. A case where -- are</b>  7 <b>you aware of any cases where jail time is a theoretical</b>  8 <b>possibility, but the State agreed not to seek jail time and</b>  9 <b>so your office did not enter an appearance in the case?</b>  10 A There has. Especially we went through some  11 issues of trying to reduce caseload back in 2012 and there  12 were a lot of meetings I went to with judges and  13 prosecutors. And I know that was one of the things that we  14 had talked about that if the State would agree to waive  15 jail time on some misdemeanors, that would keep us out of  16 the case and help reduce caseload, yes.  17 <b>Q You said there were conversations; do you know</b>  18 <b>if that actually occurred in 2012?</b>  19 A I believe it did happen to some degree.  20 <b>Q Are there any immigration specialists in your</b>  21 <b>office?</b>  22 A No.  23 <b>Q In your opinion, do attorneys in your office</b>  24 <b>have adequate time to advise your clients on the</b>  25 <b>immigration consequences or decisions they make in their</b></p>
<p style="text-align: right;">Page 62</p> <p>1 A No, because like I said, I think most of them  2 are taking place on the date of disposition.  3 <b>Q Are you aware of cases in your area where</b>  4 <b>defendants plead guilty pro se?</b>  5 A Ask that again, please.  6 <b>Q Are you aware of cases in your area where</b>  7 <b>defendants plead guilty pro se, without the advice of</b>  8 <b>counsel?</b>  9 A Yes.  10 <b>Q What kinds of cases would that occur?</b>  11 A It happens a lot on misdemeanor cases.  12 <b>Q Would those defendants be eligible for</b>  13 <b>representation by the MSPD?</b>  14 A Sometimes.  15 <b>Q Why would someone who is eligible for</b>  16 <b>representation by your office plead guilty without the</b>  17 <b>advice of counsel?</b>  18 A Well, right now they might do that because  19 they know they would be on a waitlist and it could be a  20 very long time before they got an attorney anyways. Before  21 we started the waitlist, I'm not sure why someone would do  22 that other than they think they can just expedite it and  23 get it done quickly.  24 <b>Q At any point did your office have an agreement</b>  25 <b>with the prosecutor's office that they would not take cases</b></p>	<p style="text-align: right;">Page 64</p> <p>1 <b>criminal cases?</b>  2 A No. In fact, I just had an attorney come into  3 my office just the other day on an immigration issue  4 because none of us are immigration experts. We have had in  5 the past some who were who would agree to pro bono would  6 allow us to call them and kind of pick their brain on some  7 of these topics. But the name and number that we had  8 given -- this particular attorney we would call, apparently  9 had never gotten with her. So this was causing some stress  10 on how to counsel this client because she didn't know what  11 to tell them.  12 <b>Q Do attorneys in your office receive adequate</b>  13 <b>training on immigration consequences?</b>  14 A I believe there have been some tracks. I think  15 there have been some classes on that at some of our  16 statewide training.  17 <b>Q But there are no immigration specialist who</b>  18 <b>work in your office?</b>  19 A No.  20 MR. SHAHABIAN: I think this is good time to  21 take a break. Let's go off the record.  22 THE VIDEOGRAPHER: Going off the record. The  23 time is 10:33. This ends Media 1.  24 (A recess was taken.)  25 THE VIDEOGRAPHER: Going back on the record.</p>

16 (Pages 61 to 64)

<p style="text-align: right;">Page 65</p> <p>1 The time is 10:43 a.m. This begins Media 2.</p> <p>2 <b>Q (By Mr. Shahabian) Welcome back,</b></p> <p>3 <b>Mr. Hackathorn.</b></p> <p>4 A Thank you.</p> <p>5 <b>Q I wanted to turn to some of the more</b></p> <p>6 <b>administrative tasks you handle. Are you responsible for</b></p> <p>7 <b>the management of the budget of your office?</b></p> <p>8 A We have an office budget but, I mean,</p> <p>9 that's -- no. For the most part, we are told how much</p> <p>10 money we have for certain things. But if that money runs</p> <p>11 short, I just give a call to our comptroller and she is the</p> <p>12 one that moves the money around and makes sure everything</p> <p>13 is covered.</p> <p>14 <b>Q Sounds good. How do you handle -- is there</b></p> <p>15 <b>anyone in your office who is dedicated to handling juvenile</b></p> <p>16 <b>cases?</b></p> <p>17 A We did up until about four or five months ago.</p> <p>18 <b>Q What changed?</b></p> <p>19 A We had a meeting, a couple of meetings, with</p> <p>20 the presiding judge here in Greene County; that's the only</p> <p>21 area that we were currently doing juvenile cases in. And</p> <p>22 because of our caseload issues, the county had agreed that</p> <p>23 they would use some of their surplus to hire attorneys to</p> <p>24 handle those cases from now on. Unless it was going to be</p> <p>25 a certification, in which case they would send the case to</p>	<p style="text-align: right;">Page 67</p> <p>1 <b>still handling certifications?</b></p> <p>2 A Since we came to this agreement, there has not</p> <p>3 been a certification case that they have sent our way. So</p> <p>4 we have kind of gotten out of the juvenile business</p> <p>5 completely for the time being.</p> <p>6 <b>Q Do you expect that to stay that way?</b></p> <p>7 A I don't expect anything. You never know. As</p> <p>8 budgets change, it could be, you know, next year, we find</p> <p>9 ourselves back taking juvenile cases again. For the time</p> <p>10 being, this is how it is.</p> <p>11 <b>Q When your office was handling juvenile cases,</b></p> <p>12 <b>were all of those cases being handled by the specialist you</b></p> <p>13 <b>mentioned who has left?</b></p> <p>14 A Well, I guess I wouldn't necessarily call her</p> <p>15 a specialist. We had one attorney who was assigned to</p> <p>16 juvenile cases. But to say that she was a specialist would</p> <p>17 be a misnomer. I mean, she was -- that was just a caseload</p> <p>18 that she was given.</p> <p>19 <b>Q Did she have any particular expertise in</b></p> <p>20 <b>juvenile matters?</b></p> <p>21 A No.</p> <p>22 <b>Q Did she have any specialized training in</b></p> <p>23 <b>handling juvenile cases?</b></p> <p>24 A No.</p> <p>25 <b>Q Did she carry a non-juvenile caseload in</b></p>
<p style="text-align: right;">Page 66</p> <p>1 us.</p> <p>2 <b>Q So when you say the county, you mean Greene</b></p> <p>3 <b>County handles non-certification juvenile cases right now?</b></p> <p>4 A They contract out those cases, yes.</p> <p>5 <b>Q How does it work in Taney and Christian</b></p> <p>6 <b>Counties?</b></p> <p>7 A We have never really been involved in juvenile</p> <p>8 in those two counties. I believe those two counties have</p> <p>9 always kind of done something similar as to what Greene</p> <p>10 County is doing now, just contracting out with private</p> <p>11 attorneys in those areas.</p> <p>12 <b>Q Do you know any of the attorneys who those</b></p> <p>13 <b>cases are contracting out to?</b></p> <p>14 A I know some of them here. I don't know</p> <p>15 necessarily who is getting it in Christian and Taney.</p> <p>16 <b>Q Who are some of the attorneys who work on</b></p> <p>17 <b>those cases here?</b></p> <p>18 A I believe, I'm not 100 percent, but I believe</p> <p>19 some of them are going to some attorneys who had previously</p> <p>20 worked in our office and are now private practice.</p> <p>21 <b>Q And so presently, is there anyone in your</b></p> <p>22 <b>office who specializes in juvenile cases?</b></p> <p>23 A So right at this moment is there? No, there</p> <p>24 is not.</p> <p>25 <b>Q And just to be clear, in Greene County you're</b></p>	<p style="text-align: right;">Page 68</p> <p>1 <b>addition to her juvenile caseload?</b></p> <p>2 A Yes.</p> <p>3 <b>Q Do you recall roughly what percentage of cases</b></p> <p>4 <b>was juvenile versus non-juvenile?</b></p> <p>5 A I would say out of her 120 or so open cases</p> <p>6 that she had back then, I think around 30 or so would have</p> <p>7 been juvenile cases.</p> <p>8 <b>Q And what kinds of juvenile cases would she</b></p> <p>9 <b>handle?</b></p> <p>10 A Any that came our way.</p> <p>11 <b>Q So not just certifications?</b></p> <p>12 A Correct. Now during the time that she was</p> <p>13 handling juvenile, I don't recall that we got any</p> <p>14 certification cases. Now those I do treat a little bit</p> <p>15 differently. Depending on -- usually, I mean if they are</p> <p>16 going to certify a juvenile, it's a very serious case. So</p> <p>17 that would likely be assigned to somebody who handles more</p> <p>18 complex cases, not necessarily her.</p> <p>19 <b>Q So she would -- would she handle detention</b></p> <p>20 <b>case -- hearings?</b></p> <p>21 A Yes.</p> <p>22 <b>Q And she would advocate for informal</b></p> <p>23 <b>adjustment?</b></p> <p>24 A I believe so, yes.</p> <p>25 <b>Q If your office were to resume handling</b></p>

17 (Pages 65 to 68)

<p style="text-align: right;">Page 69</p> <p>1 juvenile cases in Greene County, would you expect that they</p> <p>2 would be assigned to someone similar who is not a</p> <p>3 specialist in juvenile matters?</p> <p>4 A Yes. The way that assignment was usually</p> <p>5 handled in our office, our attorneys basically took a</p> <p>6 one-year term at handling the juvenile matters. When their</p> <p>7 year was up, that assignment would go to somebody else.</p> <p>8 Q And are the cases that the county is</p> <p>9 contracting out cases where juveniles would otherwise be</p> <p>10 eligible for representation by the MSPD?</p> <p>11 A Yes.</p> <p>12 Q How did your office make indigency</p> <p>13 determinations in juvenile cases?</p> <p>14 A We really didn't. If the court referred them,</p> <p>15 we took it.</p> <p>16 Q So court referrals were how juvenile cases</p> <p>17 came to your office?</p> <p>18 A Correct.</p> <p>19 Q I'm handing you an exhibit that I will ask our</p> <p>20 court reporter to mark as Plaintiff's 50. We fixed the</p> <p>21 format on this.</p> <p>22 MS. SHIPMA: Yeah, it was marked yesterday too</p> <p>23 on a fixed format.</p> <p>24 MR. SHAHABIAN: Oh, it was?</p> <p>25</p>	<p style="text-align: right;">Page 71</p> <p>1 end date June 30, 2017?"</p> <p>2 A Yes.</p> <p>3 Q So is your understanding that these caseload</p> <p>4 metrics are for the entire fiscal year 2017?</p> <p>5 A It appears to be so, yes.</p> <p>6 Q I know the font is quite small, but do you see</p> <p>7 Area 31 Springfield?</p> <p>8 A I do.</p> <p>9 Q And what rank is it assigned in all the areas</p> <p>10 for workload capacity?</p> <p>11 A If I followed it over correctly I believe</p> <p>12 ninth.</p> <p>13 Q Do you have an understanding of how the MSPD</p> <p>14 determines workload capacity?</p> <p>15 A Well, I didn't prepare this worksheet, but I</p> <p>16 believe it's done using the RubinBrown Standard and the</p> <p>17 waited caseload standard.</p> <p>18 Q What is your understanding of what the</p> <p>19 RubinBrown standard is?</p> <p>20 A I couldn't go into you in any depth as to how</p> <p>21 they came to those waited caseloads. I can just tell you I</p> <p>22 have used it, even within the office. You know, various</p> <p>23 types of cases are given various weights as to how much</p> <p>24 time it potentially takes to prepare that case. So, you</p> <p>25 know, A,B felony is weighted heavier than a misdemeanor by</p>
<p style="text-align: right;">Page 70</p> <p>1 MS. SHIPMA: Yeah.</p> <p>2 MR. SHAHABIAN: Oh, okay.</p> <p>3 Q Do you recognize this document?</p> <p>4 A Yes. This is the budget request that is</p> <p>5 prepared by our comptroller.</p> <p>6 Q Could you turn to the last page of this</p> <p>7 document?</p> <p>8 A Okay.</p> <p>9 Q Do you recognize this spreadsheet?</p> <p>10 A It appears to be a caseload metric worksheet</p> <p>11 ordering the various MSPD offices by percentage of capacity</p> <p>12 --</p> <p>13 Q Have you seen --</p> <p>14 A -- and how far over they are percentage of</p> <p>15 capacity.</p> <p>16 Q Have you seen this particular spreadsheet</p> <p>17 before?</p> <p>18 A Yeah. This is -- budget request is sent out</p> <p>19 to all the district defenders and I do look at it when it's</p> <p>20 received by my office. I do receive also various versions</p> <p>21 of this before in the past.</p> <p>22 Q And you see at the top it says, "Cumulative</p> <p>23 Caseload Metrics Fiscal Year 2017"?</p> <p>24 A Yes.</p> <p>25 Q And then it says, "Start date July 1, 2016;</p>	<p style="text-align: right;">Page 72</p> <p>1 a long shot. Then that's compared up with the number of</p> <p>2 hours available -- that an attorney has available to work</p> <p>3 on all of their cases. Then that gets you your percentage</p> <p>4 of how far over capacity you are.</p> <p>5 Q You said you use the RubinBrown metrics in</p> <p>6 your office; how do you use them?</p> <p>7 A I use them every so often just to see where my</p> <p>8 attorneys are at as far as how far over capacity they are.</p> <p>9 Q Roughly what percentage of your attorneys are</p> <p>10 over 100 percent of their capacity?</p> <p>11 A Right at this moment in time, I would say</p> <p>12 probably all but one. We still have one attorney who is</p> <p>13 still kind of working up her caseload.</p> <p>14 Q How long ago did that attorney start?</p> <p>15 A She started in September.</p> <p>16 Q So she does not yet have a full caseload?</p> <p>17 A Probably not one that gets her over 100</p> <p>18 percent of capacity yet.</p> <p>19 Q According to this spreadsheet it says the</p> <p>20 Springfield office is 277.5 percent of capacity for fiscal</p> <p>21 year '17. I'm not going to ask you to give an opinion on</p> <p>22 whether you agree with how that number was calculated, but</p> <p>23 would you agree roughly that your attorney was -- I'm</p> <p>24 sorry, that your office was well over capacity for fiscal</p> <p>25 year 2017?</p>

18 (Pages 69 to 72)

<p style="text-align: right;">Page 73</p> <p>1 A Yes.</p> <p>2 <b>Q Why would you agree with that?</b></p> <p>3 A Because just as I have done it for individual</p> <p>4 attorneys, not for the whole office as a whole, I know that</p> <p>5 in times past where we've had some attorneys that were at</p> <p>6 300 percent or 400 percent. I had one attorney at one</p> <p>7 point in time that was at 500 percent. So, yeah, you</p> <p>8 average it out for the whole office. I would say, yes, our</p> <p>9 office as a whole has definitely been over capacity.</p> <p>10 <b>Q And separate from the percentages and your</b></p> <p>11 <b>understanding, for example the attorney who you said was</b></p> <p>12 <b>500 percent over capacity, what would that mean in terms of</b></p> <p>13 <b>their day-to-day ability to provide adequate defense to</b></p> <p>14 <b>their clients?</b></p> <p>15 A It's not adequate defense for probably any of</p> <p>16 his clients at that point in time. I mean, you're just</p> <p>17 treading water. Just cases getting continued and</p> <p>18 continued, pretrial conference after pretrial conference.</p> <p>19 I know for sure because during that time period for that</p> <p>20 particular attorney too I was getting a lot of complaint</p> <p>21 letters about I haven't seen him in ages because he didn't</p> <p>22 have the time to get over to the jail.</p> <p>23 <b>Q What do you do when you receive a complaint</b></p> <p>24 <b>letter about an attorney?</b></p> <p>25 A First thing I usually do is I will meet with</p>	<p style="text-align: right;">Page 75</p> <p>1 <b>caseload in your office?</b></p> <p>2 A Effectively represent every one of those</p> <p>3 clients, no.</p> <p>4 <b>Q Can attorneys refuse cases that have been</b></p> <p>5 <b>assigned to your office?</b></p> <p>6 A Up until about a few months ago, no.</p> <p>7 <b>Q Let's start with up until a few months ago;</b></p> <p>8 <b>had attorneys tried to refuse cases prior to that point?</b></p> <p>9 A No, I never had an attorney come to me and</p> <p>10 refuse a case.</p> <p>11 <b>Q Has your office up -- and still focusing on</b></p> <p>12 <b>the period prior to a few months ago -- has your office</b></p> <p>13 <b>refused to take cases at any point during your tenure?</b></p> <p>14 A We did have a period I referenced, I think it</p> <p>15 was around 2012, where it was per a MSPD rule that had been</p> <p>16 promulgated that we had attempted to refuse cases to try to</p> <p>17 reduce caseload.</p> <p>18 <b>Q How did that rule work?</b></p> <p>19 A Excuse me?</p> <p>20 <b>Q How did that rule work, that MSPD rule that</b></p> <p>21 <b>you referenced?</b></p> <p>22 A I don't remember the exact reading of the rule</p> <p>23 at this point in time. Too much water has passed under the</p> <p>24 bridge.</p> <p>25 <b>Q Who did you tell that you would be -- you know</b></p>
<p style="text-align: right;">Page 74</p> <p>1 the attorney and ask them about when their last client</p> <p>2 contact was. Talk a little bit about how in depth that</p> <p>3 conversation was. If the contact hadn't been an extreme</p> <p>4 amount of time ago, we'll just talk about when they can get</p> <p>5 over then the next time to see them and we'll kind of set a</p> <p>6 deadline for them to get over and see that client and then</p> <p>7 I generally just leave it at. Then I follow-up with them</p> <p>8 to make sure that contact was done. If I think there is</p> <p>9 more issues there than what the attorney is saying, I might</p> <p>10 also pull the file and actually do a file review to see how</p> <p>11 many contacts there has been with the client.</p> <p>12 <b>Q In your opinion, so you -- in your opinion,</b></p> <p>13 <b>are the issues in your office's ability to effectively</b></p> <p>14 <b>represent clients -- strike that. In your opinion, could</b></p> <p>15 <b>any attorney, no matter how expert, adequately represent</b></p> <p>16 <b>clients given the constraints facing lawyers in your</b></p> <p>17 <b>office?</b></p> <p>18 A Depending on what point they are in and how</p> <p>19 long they have been with the office, if it's one of the</p> <p>20 attorneys that is just starting out and growing their</p> <p>21 caseload, yes, they can initially.</p> <p>22 <b>Q Why can they initially?</b></p> <p>23 A Because their number of cases is much lower</p> <p>24 than everybody else's.</p> <p>25 <b>Q Could an attorney carrying an average or full</b></p>	<p style="text-align: right;">Page 76</p> <p>1 <b>what, let's just get the exhibit. Can I get 14 and 15. So</b></p> <p>2 <b>I'm handing you a document that I will ask the court</b></p> <p>3 <b>reporter to mark Plaintiff's 51 and Plaintiff's 52. Do you</b></p> <p>4 <b>recognize these documents, Mr. Hackathorn?</b></p> <p>5 A They look vaguely familiar.</p> <p>6 <b>Q What do they appear to be to you?</b></p> <p>7 A These were notices that were sent out by our</p> <p>8 director at the time, Marty Robinson, to the presiding</p> <p>9 judges in both 38th and the 31st circuit putting them on</p> <p>10 notice that our office had exceeded our maximum caseload</p> <p>11 standard for three consecutive calendar months. I believe</p> <p>12 that was to then trigger -- triggered meetings with them to</p> <p>13 try to reduce caseload. And if not, then we potentially</p> <p>14 refused cases as best my memory recalls.</p> <p>15 <b>Q Do you remember whether there were meetings</b></p> <p>16 <b>that occurred after you sent these notices?</b></p> <p>17 A Yes.</p> <p>18 <b>Q What happened at those meetings?</b></p> <p>19 A A lot of talk. Nothing that would necessarily</p> <p>20 have resulted in any real caseload relief for our</p> <p>21 attorneys.</p> <p>22 <b>Q Do you recall the Missouri Supreme Court's</b></p> <p>23 <b>decision in Waters?</b></p> <p>24 A Yes.</p> <p>25 <b>Q Were you a party in that case?</b></p>

19 (Pages 73 to 76)

<p style="text-align: right;">Page 77</p> <p>1 A I was.</p> <p>2 <b>Q You were a plaintiff in that case?</b></p> <p>3 A I believe so, yes.</p> <p>4 <b>Q Could you briefly state your recollection of</b></p> <p>5 <b>what the Waters case was about?</b></p> <p>6 A Well, my role in the Waters case all took</p> <p>7 place right up front. After that, it was out of my hands.</p> <p>8 I went down with my attorneys who were assigned to</p> <p>9 Christian County that day after we decided we were going to</p> <p>10 start refusing cases and just to try to take some of the</p> <p>11 heat off of them and let the judge vent at me. And we --</p> <p>12 one of the cases that I refused representation on was the</p> <p>13 crux of the Waters case because he then went ahead and</p> <p>14 ordered us in to it and that's what the Waters case was</p> <p>15 about. I can't remember the young man's name even now who</p> <p>16 was the poor defendant that was caught in the middle of all</p> <p>17 of that.</p> <p>18 <b>Q But it's fair to say that the case was about</b></p> <p>19 <b>your office's ability to refuse case assignments?</b></p> <p>20 A Yes.</p> <p>21 <b>Q Do you recall how the Waters case was</b></p> <p>22 <b>resolved?</b></p> <p>23 A The Waters case ultimately said that the rule</p> <p>24 could be followed.</p> <p>25 <b>Q How did attorneys in your office respond to</b></p>	<p style="text-align: right;">Page 79</p> <p>1 <b>Q Why not?</b></p> <p>2 A Well, for one, for my particular office, we</p> <p>3 had kind of been ground zero on this whole thing prior to</p> <p>4 the Waters case. As I said, I went to meetings. I went to</p> <p>5 those meetings and I talked with judges and I talked with</p> <p>6 prosecutors and it resulted in really nothing. I didn't</p> <p>7 expect anything to have changed. Also, I didn't like the</p> <p>8 standard being different for our attorneys than for any</p> <p>9 other attorney that's out there. And that's kind of what's</p> <p>10 going on now.</p> <p>11 <b>Q And by what's going on now, are you referring</b></p> <p>12 <b>to the Hinkebein decision and what's followed from that</b></p> <p>13 <b>decision?</b></p> <p>14 A Correct, yes. You know, our position is that</p> <p>15 the ethical rules, and certainly by the Hinkebein decision,</p> <p>16 it shows, I mean, that ethical rules apply equally to our</p> <p>17 attorneys as they do for any other attorney in this state.</p> <p>18 Their license is just as much in jeopardy as anybody else.</p> <p>19 The fact that they should have to jump through more hoops</p> <p>20 to reduce their caseload than anyone else when their</p> <p>21 license is just as much in jeopardy seems ridiculous.</p> <p>22 <b>Q What is your understanding of what the ethical</b></p> <p>23 <b>rules require in terms of accepting cases?</b></p> <p>24 A Well, one of the ethical rules concerns</p> <p>25 competence. And are we competently representing all of our</p>
<p style="text-align: right;">Page 78</p> <p>1 <b>the Waters rule -- to the Waters ruling?</b></p> <p>2 A Initially pretty well.</p> <p>3 <b>Q What do you mean?</b></p> <p>4 A Initially, it looked like we had won and that</p> <p>5 might ultimately result in some real caseload relief.</p> <p>6 <b>Q Why do you say initially?</b></p> <p>7 A Well, things kind of went south after that.</p> <p>8 <b>Q How did they go south?</b></p> <p>9 A Well, they went south in that legislature</p> <p>10 tried to basically disband the public defender system.</p> <p>11 That ended up not happening, thankfully. And then there</p> <p>12 were some -- there was some laws that were passed that</p> <p>13 basically did away with the Waters case. Basically saying</p> <p>14 that if we wanted caseload relief, we had to go through the</p> <p>15 Statute of 600.063 and basically request pretty please to</p> <p>16 the courts that they would give us some relief. And it had</p> <p>17 to be done as an office by the district defender of each</p> <p>18 office on an individual attorney basis. I couldn't even go</p> <p>19 for the office as a whole to the judge. I had to go</p> <p>20 attorney, by attorney, by attorney and demonstrate that</p> <p>21 they were overloaded before any relief could potentially,</p> <p>22 theoretically, be granted.</p> <p>23 <b>Q Did you attempt to go down that road and ask</b></p> <p>24 <b>for relief for individual attorneys?</b></p> <p>25 A I did not.</p>	<p style="text-align: right;">Page 80</p> <p>1 clients when you have 150 to 200 cases, no. As I said</p> <p>2 before, you know, some of these misdemeanors clients,</p> <p>3 probation violation clients, they are not getting any real</p> <p>4 attention. Basically a warm body in there making an off</p> <p>5 the cuff argument. That's not competent representation.</p> <p>6 There is a rule on diligence as I've also discussed</p> <p>7 earlier. A lot of these cases where the client wants a</p> <p>8 trial and they are sitting in jail, they'll easily sit in</p> <p>9 jail a year or more to go to trial. That's not diligent</p> <p>10 representation. Communication; we have talked a lot of</p> <p>11 about communication. There is an ethical rule on that. We</p> <p>12 have always failed in that when we have such a high</p> <p>13 caseload on two fronts: One, keeping the client</p> <p>14 up-to-date; and then on the other front of making sure that</p> <p>15 they are reasonably -- legal matters are reasonably</p> <p>16 explained to them so that they can make informed decisions.</p> <p>17 And then also, I failed on the ethical rule that pertains</p> <p>18 to me as a supervising attorney in making some reasonable</p> <p>19 effort to ensure that those other rules are complied with</p> <p>20 by those under my supervision.</p> <p>21 <b>Q Given your understanding of the ethical rules</b></p> <p>22 <b>-- actually, let's take a step back. What is your</b></p> <p>23 <b>understanding of what happened in the Hinkebein case?</b></p> <p>24 A My understanding is that some deadlines were</p> <p>25 missed by Mr. Hinkebein and a complaint was filed against</p>

20 (Pages 77 to 80)



<p style="text-align: right;">Page 81</p> <p>1 him. He -- as part of his defense when they were going to  2 suspend his license, he stated that had too many cases and  3 was basically told, to some degree, too bad. That you  4 either needed to quit or you needed to go to your  5 supervisor and say something about this huge caseload,  6 which he had not done.</p> <p>7 <b>Q How did attorneys in Area 31 react to the</b>  8 <b>Hinkebein decision?</b></p> <p>9 A They were worried. They were worried. They  10 knew that they have a lot of cases too. That they weren't  11 doing everything in every case that maybe they should be  12 doing. You know, just like any attorney, they worked hard  13 to get that license. So there was concern.</p> <p>14 <b>Q Did you take any formal actions in response to</b>  15 <b>the Hinkebein decision?</b></p> <p>16 A Not right away. We had a statewide management  17 meeting, I think a few weeks after the Hinkebein decision.  18 After that management meeting, I did. I went back and I  19 had individual meetings with all of the attorneys in my  20 office to make sure what I thought was true was in fact  21 true and that the attorneys in fact agreed with me on that  22 and that they were overloaded, that they had too many cases  23 to follow the ethical rules other than, like I said,  24 potentially the one attorney who had just started. And  25 then based upon that, I sent notice to all of our presiding</p>	<p style="text-align: right;">Page 83</p> <p>1 presiding judge for the 38th Circuit.</p> <p>2 <b>Q What was Judge Johnson's response?</b></p> <p>3 A Her response at that point right after this  4 notice was to request a meeting with me, the prosecutor,  5 and the other judges in her circuit.</p> <p>6 <b>Q Did that meeting take place?</b></p> <p>7 A It did.</p> <p>8 <b>Q What happened at that meeting?</b></p> <p>9 A Well, initially I thought that the meeting,  10 based upon the request she sent, was to discuss possibly  11 ways that the court could reduce caseload and maybe make  12 sure that people weren't on a waitlist or weren't on a  13 waitlist for very long. When I got to the meeting, it did  14 not turn out to be that. It turned out to be more of a  15 complaint session about what we were doing, what the public  16 defender system was doing. And then also once the  17 prosecutor had made mention of 600.063, Judge Johnson  18 didn't seem much interested in doing anything else as far  19 as accommodating our attorneys and trying to reduce  20 caseload. Simply said, well, that's what you should be  21 doing is going through .063.</p> <p>22 <b>Q And what would going through .063 have</b>  23 <b>required differently from the letter that you sent to Judge</b>  24 <b>Johnson and the other judges?</b></p> <p>25 A That would have -- if you go strictly by what</p>
<p style="text-align: right;">Page 82</p> <p>1 judges letting them know that we were going to have to  2 start waitlisting some of these clients so I could reduce  3 caseload.</p> <p>4 <b>Q I'm handing you a document that I will ask our</b>  5 <b>court reporter to mark as Plaintiff's 52 -- sorry, 53. Do</b>  6 <b>you recognize this document?</b></p> <p>7 A I do.</p> <p>8 <b>Q What is it?</b></p> <p>9 A This is that notice that I said that I sent to  10 all the presiding judges letting them know that we were  11 going to have to start waitlisting some clients.</p> <p>12 <b>Q What was the response from -- who did you send</b>  13 <b>this to?</b></p> <p>14 A I sent this to Judge Thomas Mountjoy, who is a  15 presiding judge for the 31st Circuit. I sent it to --  16 well, actually, I'm incorrect on that. I thought I had  17 only sent it to the presiding judges. I actually sent it  18 to every judge that we have cases in front of in all three  19 of our circuits.</p> <p>20 <b>Q Did you receive a response from the judges in</b>  21 <b>response to this letter?</b></p> <p>22 A I believe I received a response only from one  23 judge.</p> <p>24 <b>Q Do you remember which judge?</b></p> <p>25 A That would be Judge Laura Johnson, the</p>	<p style="text-align: right;">Page 84</p> <p>1 .063 says, that would have to -- to some degree nobody  2 really knows because it's not really been done -- but it's  3 a matter of giving some sort of notice to the court on each  4 and every individual attorney who I have assigned to that  5 circuit. And then arranging some sort of meeting, whether  6 that be on the record or not; I don't think that's  7 necessarily clear either. To some degree, the prosecutor  8 being put on notice and whether or not they participate is  9 still a question as well. And then some decision being  10 made by the judge, based upon evidence I guess I would  11 present, on each of those attorneys whether or not they are  12 truly overloaded.</p> <p>13 <b>Q Did judges other than Judge Johnson react to</b>  14 <b>this letter, either formally or informally?</b></p> <p>15 A Surprisingly, no.</p> <p>16 <b>Q So you've received no response to this letter</b>  17 <b>from judges other than Judge Johnson?</b></p> <p>18 A No.</p> <p>19 <b>Q And this letter was sent October 10, 2017?</b></p> <p>20 A That's correct.</p> <p>21 <b>Q You stated in this letter that each of the</b>  22 <b>attorneys under your supervision said that their current</b>  23 <b>individual caseloads created a conflict of interest with</b>  24 <b>existing clients because they are forced to choose</b>  25 <b>effective representation of one client to the detriment of</b></p>



<p style="text-align: right;">Page 85</p> <p>1 other clients?</p> <p>2 A Correct.</p> <p>3 Q Is that still the case in Area 31?</p> <p>4 A Yes.</p> <p>5 Q Have you received any reactions from the local</p> <p>6 bar in your district in response to either Hinkebein or to</p> <p>7 this e-mail?</p> <p>8 A Informally, I have had, yes, members of the</p> <p>9 private bar talk to me and say, you know, they understood,</p> <p>10 you know, why we are doing what we are doing. And I've</p> <p>11 even had a couple say to me that, you know, they would be</p> <p>12 willing to take a couple of pro bono cases to try to help</p> <p>13 us out, but.</p> <p>14 Q You mentioned that your office created a</p> <p>15 waiting list for clients, potential clients, where you</p> <p>16 would otherwise take representation. Could you explain</p> <p>17 more how that waiting list works?</p> <p>18 A We have separate a waiting list for each</p> <p>19 jurisdiction; one for Taney county, one for Christian, and</p> <p>20 one for Greene. Ideally, what I wanted to do with that</p> <p>21 waitlist was have it prioritized with those who are in</p> <p>22 custody and have been on the waiting list the longest; when</p> <p>23 I had attorneys who became available to take cases, that</p> <p>24 those would be the ones that would come off the list first.</p> <p>25 It hasn't necessarily worked that way. We now have a color</p>	<p style="text-align: right;">Page 87</p> <p>1 represent indigent defendants over your objections?</p> <p>2 A Yes.</p> <p>3 Q I'm going to hand you a document that's</p> <p>4 already been marked Petsch Exhibit 5. And while we are</p> <p>5 doing this, I'll also hand you a document that I'll ask our</p> <p>6 court reporter to mark Plaintiff's 54.</p> <p>7 A Okay.</p> <p>8 Q Have you seen these documents before?</p> <p>9 A Yes.</p> <p>10 Q What are they?</p> <p>11 A The one marked Exhibit 5 Petsch is an example</p> <p>12 of a writ that could be done if a judge was trying to order</p> <p>13 us into a case, I believe. This was provided on our --</p> <p>14 what do you call it? The legislative database or not --</p> <p>15 litigation database as something available for us to file.</p> <p>16 And then Exhibit 54 here was an example of a motion to</p> <p>17 withdraw due to excessive caseload that our attorneys could</p> <p>18 file on their individual cases as well. That was also in</p> <p>19 the litigation database.</p> <p>20 Q So let's start with Petsch Exhibit 5. Why</p> <p>21 would the litigation database have a form writ specifically</p> <p>22 for objecting to appointments by judges?</p> <p>23 A Well, I think rightfully so, we had</p> <p>24 anticipated that not all judges, and probably the majority</p> <p>25 of judges, were not just simply going to go along with the</p>
<p style="text-align: right;">Page 86</p> <p>1 coded waitlist based upon how outraged the judge is and</p> <p>2 whether they are to the point of ordering us into the case</p> <p>3 or not. So when I have ones that are lighted up in red by</p> <p>4 our clerks where we have been ordered into the case, those</p> <p>5 are the ones that are coming off the waitlist first. They</p> <p>6 are not necessarily the ones that are in custody or been in</p> <p>7 custody the longest.</p> <p>8 Q Roughly, how many people are on the waitlist</p> <p>9 in each of these counties?</p> <p>10 A The last I think yesterday I looked at that</p> <p>11 and I think the Greene County list was -- it was somewhere</p> <p>12 around two -- somewhere between 220 or 250 people were on</p> <p>13 the wait list for Greene County. Off the top of my head, I</p> <p>14 don't recall how many are on the waitlist for Christian and</p> <p>15 Greene.</p> <p>16 Q And Taney County?</p> <p>17 A I'm sorry, for Christian and Taney, I don't</p> <p>18 recall. For Greene, it's somewhere between 220 and 250.</p> <p>19 Q Do you know roughly what percentage of those</p> <p>20 people are incarcerated?</p> <p>21 A I don't.</p> <p>22 Q Are some of those people incarcerated?</p> <p>23 A Oh, yes.</p> <p>24 Q You mention that you have prioritized where --</p> <p>25 based on judge outrage; have judges ordered your office to</p>	<p style="text-align: right;">Page 88</p> <p>1 waitlist idea and would be ordering us into cases and so</p> <p>2 this was made available for that situation when it arose.</p> <p>3 Q Have attorneys in your office used this writ?</p> <p>4 A We have not.</p> <p>5 Q Why not?</p> <p>6 A Because before we could, I believe another</p> <p>7 jurisdiction or two, or another trial office or two had</p> <p>8 tried it and to no avail. It was -- it wasn't heard</p> <p>9 basically.</p> <p>10 Q Turning to the other Exhibit 54.</p> <p>11 A Yes.</p> <p>12 Q Why would the MSPD have a form motion to</p> <p>13 withdraw?</p> <p>14 A This was done -- well, for two reasons as I</p> <p>15 understand it. One would be as an avenue for the</p> <p>16 individual attorneys to try to reduce caseloads themselves</p> <p>17 to try to withdraw out of some of their cases. And two, it</p> <p>18 was thought that by also filing these motions, even if the</p> <p>19 judge denied it, it might give them some protection from</p> <p>20 the Office of Chief Disciplinary Counsel if a complaint was</p> <p>21 filed on them in that particular case.</p> <p>22 Q Do you know if any attorneys in your office</p> <p>23 have filed a motion to withdraw due to excessive caseload?</p> <p>24 A I'm pretty sure none of them have.</p> <p>25 Q Do you know why not?</p>

22 (Pages 85 to 88)

<p style="text-align: right;">Page 89</p> <p>1 A It was one of those things where they've</p> <p>2 already got all of these cases and they already knew they</p> <p>3 were going to be denied anyways -- or pretty well figured</p> <p>4 they would all be denied. And so if it was just a matter</p> <p>5 of protecting themselves, they just figured it wasn't worth</p> <p>6 their time. They needed to focus on their cases and</p> <p>7 preparing their cases.</p> <p>8 <b>Q How have your public defenders handled cases</b></p> <p>9 <b>where judges are ordering the MSPD appointed over their</b></p> <p>10 <b>objection?</b></p> <p>11 A Well, our entry that we file in those</p> <p>12 particular cases states that it is an entry over objection.</p> <p>13 But other than that, I'm not sure.</p> <p>14 <b>Q Are they assigned -- so if a judge appoints --</b></p> <p>15 <b>orders your appointment in a case now, you're entering --</b></p> <p>16 <b>attorneys in your office are entering appearances over</b></p> <p>17 <b>objection?</b></p> <p>18 A Our office is doing that for them, yes. We</p> <p>19 don't have any judges that -- well, they're not necessarily</p> <p>20 ordering individual attorneys in my office into particular</p> <p>21 cases. We had one judge who was ordering me into a</p> <p>22 particular group of cases because I hadn't assigned them</p> <p>23 yet. But once I did assign them, you know, she was fine</p> <p>24 with whoever they were assigned to. But, yeah, once a</p> <p>25 judge has ordered us into a case, I'm kind of treating it</p>	<p style="text-align: right;">Page 91</p> <p>1 <b>Q Do you know on average, I know the waitlist</b></p> <p>2 <b>hasn't been around for very long, do you know roughly on</b></p> <p>3 <b>average how many people are coming off the waitlist and</b></p> <p>4 <b>getting assigned counsel?</b></p> <p>5 A I don't. I couldn't give you an exact on</p> <p>6 that.</p> <p>7 <b>Q Has the waitlist grown since you have started</b></p> <p>8 <b>it? Stayed steady? Reduced in number?</b></p> <p>9 A It continues to grow. It's not like we're</p> <p>10 taking them off at such a rate that it's decreased at all.</p> <p>11 It grows faster than I can take cases off of it.</p> <p>12 <b>Q How do you inform indigent defendants that</b></p> <p>13 <b>they've been placed on this waitlist?</b></p> <p>14 A When they fill out their application, as far</p> <p>15 as in Christian and Taney counties, when they fill out</p> <p>16 their application, they are informed in person because we</p> <p>17 have people down there when they fill out the applications.</p> <p>18 In Greene County if they come into the office to fill out</p> <p>19 the application, then we inform them when they come in and</p> <p>20 fill that out. For those in custody in Greene County, we</p> <p>21 don't always -- we are not always there in person when they</p> <p>22 fill out the application; it gets sent to us. So a lot of</p> <p>23 those potential clients are informed by letter.</p> <p>24 <b>Q What does the letter say?</b></p> <p>25 A I don't recall off the top of my head exactly</p>
<p style="text-align: right;">Page 90</p> <p>1 like I did before. I'll look through it and see if there</p> <p>2 is a conflict and if there is not, I assign it out to</p> <p>3 whoever is assigned to that county or that particular</p> <p>4 division.</p> <p>5 <b>Q So I want to go back to the e-mail you sent to</b></p> <p>6 <b>the judges that's Exhibit 53.</b></p> <p>7 A Okay.</p> <p>8 <b>Q And the last full paragraph on the first page,</b></p> <p>9 <b>it says" Until one or more of the attorneys in our office</b></p> <p>10 <b>are able to fully comply with their ethical obligations</b></p> <p>11 <b>under the Rules of Professional Conduct, we will no longer</b></p> <p>12 <b>be immediately entering into cases in which a defendant is</b></p> <p>13 <b>qualified." At this point, are there any attorneys in your</b></p> <p>14 <b>office who are able to fully comply with their ethical</b></p> <p>15 <b>obligations and enter into new cases?</b></p> <p>16 A Since I sent this, we have had a couple who</p> <p>17 had got to the point to where we could start actually just</p> <p>18 regularly entering them into cases, yes.</p> <p>19 <b>Q Why were they able to reach the point where</b></p> <p>20 <b>they could enter into new cases?</b></p> <p>21 A Because I had stopped assigning them cases for</p> <p>22 a couple of months. And also these were attorneys who were</p> <p>23 already -- because they were newer and didn't have the</p> <p>24 tremendously built up caseloads some of our more long-term</p> <p>25 attorneys have had.</p>	<p style="text-align: right;">Page 92</p> <p>1 what I put in that letter.</p> <p>2 <b>Q Do you recall, you know, roughly or generally</b></p> <p>3 <b>what it said?</b></p> <p>4 A Roughly it's that due to, you know, excessive</p> <p>5 caseloads we don't have an attorney available at the moment</p> <p>6 but as soon as we have one available, we'll try to get to</p> <p>7 them as soon as possible. And there is language about they</p> <p>8 will be put on a waitlist until then. There is also</p> <p>9 obviously language that they qualify for our services.</p> <p>10 <b>Q Do you know of any reaction from people on the</b></p> <p>11 <b>waiting list to being placed on the waiting list?</b></p> <p>12 A Yeah.</p> <p>13 <b>Q What reactions?</b></p> <p>14 A Well, I have been getting letters, especially</p> <p>15 from some of our folks that are, you know, they are sitting</p> <p>16 in custody, you know, basically begging and pleading can</p> <p>17 you give me some idea exactly how much longer am I going to</p> <p>18 have to wait for an attorney. Those who are out of</p> <p>19 custody, I have gotten some phone calls from. You know,</p> <p>20 I've got another court date coming up. The judge really</p> <p>21 wanted me to have an attorney. What am I supposed do.</p> <p>22 Yeah, so I'm hearing from people.</p> <p>23 <b>Q So people on the waiting list, their cases</b></p> <p>24 <b>still progress? They are not on a suspense docket?</b></p> <p>25 A Yeah, no. They still have court dates that</p>

23 (Pages 89 to 92)

<p style="text-align: right;">Page 93</p> <p>1 come around.</p> <p>2 <b>Q And they are expected to appear at those court</b></p> <p>3 <b>dates without counsel?</b></p> <p>4 A Well, the judge would prefer they were</p> <p>5 appearing with counsel at the point that he or she has</p> <p>6 referred them to us. But, yeah, they are appearing without</p> <p>7 counsel.</p> <p>8 <b>Q Are courts in your area appointing private</b></p> <p>9 <b>attorneys to represent indigent -- excuse me, indigent</b></p> <p>10 <b>defendants in non-conflict cases?</b></p> <p>11 A I can't recall any of our judges doing that,</p> <p>12 no.</p> <p>13 <b>Q How do you handle conflict cases?</b></p> <p>14 A Now all of our contract -- all of our conflict</p> <p>15 cases are contracted out to private counsel.</p> <p>16 <b>Q Was that always the case?</b></p> <p>17 A It was not.</p> <p>18 <b>Q When did it change?</b></p> <p>19 A It changed at the beginning of this fiscal</p> <p>20 year, so July -- July 1.</p> <p>21 <b>Q What was the system prior to July 1?</b></p> <p>22 A Prior to that, for what we call first-level</p> <p>23 conflicts, we had offices that we would basically cover for</p> <p>24 each other. So we had five counties that we don't handle</p> <p>25 primarily, but if the offices that did handle those cases</p>	<p style="text-align: right;">Page 95</p> <p>1 A I can't say that I have.</p> <p>2 <b>Q Have you heard of any pro bono programs to</b></p> <p>3 <b>handle indigent defense cases outside of the MSPD?</b></p> <p>4 A For criminal cases?</p> <p>5 <b>Q For criminal cases.</b></p> <p>6 A No.</p> <p>7 <b>Q What kinds of cases are on the waiting list</b></p> <p>8 <b>right now?</b></p> <p>9 A All kinds. We even had a murder case on the</p> <p>10 waitlist for a little bit. So it's everything from</p> <p>11 misdemeanor up to murder.</p> <p>12 <b>Q What are the negative effects on indigent</b></p> <p>13 <b>defendants for being put on a waitlist?</b></p> <p>14 A Well, there could be a lot of detrimental</p> <p>15 effects of being on the waitlist. One, you still have</p> <p>16 these court appearances that you've talked about where they</p> <p>17 are without counsel and that's the potential for them to</p> <p>18 say something in court that they shouldn't say. We have</p> <p>19 had -- we have been in court and seen some folks who were</p> <p>20 incarcerated who have waived counsel, just so that they</p> <p>21 could potentially get out of jail or work out something</p> <p>22 with the prosecutor and represented themselves. And I'm</p> <p>23 sure that they did not get an outcome they would have had</p> <p>24 had they had counsel.</p> <p>25 <b>Q So you're aware of indigent defendants who</b></p>
<p style="text-align: right;">Page 94</p> <p>1 -- or those counties primarily had a personal conflict,</p> <p>2 they would send those cases to us. And then there are</p> <p>3 offices that would handle our three counties for our</p> <p>4 conflicts. We had five conflict counties. We have Dade,</p> <p>5 Dallas, Webster, Stone, and Polk counties.</p> <p>6 <b>Q Did handling conflict cases internally impact</b></p> <p>7 <b>your attorney's ability to handle their other cases?</b></p> <p>8 A It did. I mean, they were great time</p> <p>9 consuming things because they -- you wouldn't have a large</p> <p>10 number of conflict cases, but they would often take several</p> <p>11 days, a month because you would have to drive to those</p> <p>12 counties, sit there through sometimes the whole Law Days</p> <p>13 for those cases. Then you also had to go to those counties</p> <p>14 to do your jail visits. So a small number of clients was</p> <p>15 getting a large percentage of the time.</p> <p>16 <b>Q Do you know whether the system that you have</b></p> <p>17 <b>to handle conflict cases after July 1 is permanent?</b></p> <p>18 A As long as the money holds out. I know that</p> <p>19 our director would like to make it permanent, but the money</p> <p>20 has to be there.</p> <p>21 <b>Q If the money is not there, do you expect to go</b></p> <p>22 <b>back to the prior system of conflict counties?</b></p> <p>23 A I do.</p> <p>24 <b>Q Have you heard of the Missouri Coalition for</b></p> <p>25 <b>the Right to Counsel?</b></p>	<p style="text-align: right;">Page 96</p> <p>1 <b>waived their right to counsel after being put on the</b></p> <p>2 <b>waitlist?</b></p> <p>3 A I am.</p> <p>4 <b>Q Do you know roughly how many people have done</b></p> <p>5 <b>that?</b></p> <p>6 A I don't.</p> <p>7 <b>Q Were those cases where jail time was a</b></p> <p>8 <b>possibility?</b></p> <p>9 A Yes.</p> <p>10 <b>Q Do you know if those cases resulted in jail</b></p> <p>11 <b>time?</b></p> <p>12 A I don't know what ultimate outcome came of</p> <p>13 those cases.</p> <p>14 <b>Q You mentioned earlier that two attorneys</b></p> <p>15 <b>recently resigned from your office. Do you know why they</b></p> <p>16 <b>resigned?</b></p> <p>17 A I'm not exactly sure about one, but I am</p> <p>18 pretty sure about the other. The one I'm sure about it</p> <p>19 kind of came out of -- well, it definitely came out of the</p> <p>20 situation we were having in Christian County ever since we</p> <p>21 started the waitlist and that judge's reaction and the</p> <p>22 difficulty they were having in court because of that; kind</p> <p>23 of the tension that was coming out of that. Also, I don't</p> <p>24 believe he cared for MSPD's response in that particular</p> <p>25 situation. To be more specific, I think he thought that a</p>

24 (Pages 93 to 96)

<p style="text-align: right;">Page 97</p> <p>1 complaint should have been filed immediately against that</p> <p>2 judge by MSPD.</p> <p>3 <b>Q What was the judge's reaction that triggered</b></p> <p>4 <b>this?</b></p> <p>5 A Well, because we were having difficulties in</p> <p>6 that area and she did not seem to want to work with us.</p> <p>7 She was ordering us into more cases than any other judge</p> <p>8 was ordering us into. I had taken steps to try on my own</p> <p>9 to clear up a little bit of our attorney's time. In</p> <p>10 Christian County, a situation that had been occurring was</p> <p>11 even on Law Days, even when our attorneys were done with</p> <p>12 their cases, they were asked by the court to stay in court</p> <p>13 and wait until the end of the day and then she would bring</p> <p>14 up inmates that we were not representing yet but would</p> <p>15 probably qualify for our services and our attorneys would</p> <p>16 take those applications in court and then bring them back</p> <p>17 to the office. In order to try to clear up some time for</p> <p>18 them, I informed Judge Johnson that I would no longer have</p> <p>19 them waiting around until the end of the day to take those</p> <p>20 applications. If she wanted to send a list of referrals, I</p> <p>21 would send a support staff member to take those</p> <p>22 applications, but I wanted our attorneys to leave court</p> <p>23 after their cases were completed so that they could work on</p> <p>24 their cases or maybe do jail visits or office appointments;</p> <p>25 that sort of thing. She did not take well to that</p>	<p style="text-align: right;">Page 99</p> <p>1 an immediate complaint filed against her and there wasn't</p> <p>2 one, so.</p> <p>3 <b>Q How long had that attorney been working at</b></p> <p>4 <b>your office?</b></p> <p>5 A He had been with our office for at least, I'd</p> <p>6 say ten to twelve years I think. He had been with the</p> <p>7 system longer. He actually transferred from another MSPD</p> <p>8 office when he came to us.</p> <p>9 <b>Q Who was it?</b></p> <p>10 A His name is Morris Mettler.</p> <p>11 <b>Q How many attorneys were in the courtroom the</b></p> <p>12 <b>day that bailiffs were stationed outside and they were told</b></p> <p>13 <b>to fill out these forms?</b></p> <p>14 A Only two of our three attorneys were in the</p> <p>15 courtroom that day. The third one had a doctor's</p> <p>16 appointment, so she wasn't there.</p> <p>17 <b>Q How many attorneys total are assigned to the</b></p> <p>18 <b>Christian County Courthouse?</b></p> <p>19 A Three.</p> <p>20 MR. SHAHABIAN: This is a good time to go off</p> <p>21 the record and take a break.</p> <p>22 THE VIDEOGRAPHER: Going off the record. The</p> <p>23 time is 11:43 a.m. This ends Media 2.</p> <p>24 (A recess was taken.)</p> <p>25 THE VIDEOGRAPHER: Going back on the record.</p>
<p style="text-align: right;">Page 98</p> <p>1 decision. It had been circulated around to our attorneys,</p> <p>2 not necessarily from Judge Johnson, but from people that</p> <p>3 worked for her, such as the bailiffs, that they were going</p> <p>4 to be basically ordered to stay there. Then on a</p> <p>5 particular Law Day where this all kind of came to a head,</p> <p>6 she did order them to stay in court even though I told them</p> <p>7 they needed to come back to the office and had even -- from</p> <p>8 what I'm told by our attorneys -- that bailiffs were even</p> <p>9 stationed at the exits of the courtroom to keep them from</p> <p>10 leaving.</p> <p>11 <b>Q How did the attorney who resigned react to</b></p> <p>12 <b>that?</b></p> <p>13 A On that particular day?</p> <p>14 <b>Q To you.</b></p> <p>15 A To me? Well, he wrecked me on that day. He</p> <p>16 called me and asked what should we do and I told them to go</p> <p>17 ahead and leave. They were followed out of the courthouse</p> <p>18 by bailiff saying, "You're not free to go. You're not free</p> <p>19 to go. We are going to get you." They actually had a jury</p> <p>20 trial that following week scheduled in front of that judge.</p> <p>21 So our trial division director, Ellen Blau, came down and</p> <p>22 both of us went and sat in that Monday just to see if there</p> <p>23 was going to be any retaliation against our attorneys for</p> <p>24 leaving. There was not. Fortunately, nothing was done to</p> <p>25 them. But his reaction from that point forward was wanting</p>	<p style="text-align: right;">Page 100</p> <p>1 The time is 11:55 a.m. This begins Media 3</p> <p>2 <b>Q Thanks for sticking around, Mr. Hackathorn.</b></p> <p>3 A Certainly.</p> <p>4 <b>Q Basic question, just for my edification, what</b></p> <p>5 <b>is a Law Day?</b></p> <p>6 A In more rural counties, Christian and Taney</p> <p>7 County, it's a day that the circuit court has to pretty</p> <p>8 much cake care of anything that the circuit court does on</p> <p>9 its cases, you know, whether it be pleas or pretrial</p> <p>10 conference, or anything other than a trial; bail request,</p> <p>11 bond reduction request and that sort of thing. All of</p> <p>12 those are generally taken up on a Law Day.</p> <p>13 <b>Q How often is there a Law Day?</b></p> <p>14 A Well, that's changed, but only recently. It</p> <p>15 used to be that each of those counties had three Law Days a</p> <p>16 month.</p> <p>17 <b>Q You mentioned that recently the Greene County</b></p> <p>18 <b>agreed to contract out juvenile cases; do you know who in</b></p> <p>19 <b>the county is responsible for that?</b></p> <p>20 A I don't.</p> <p>21 <b>Q Do you know what office in the county is</b></p> <p>22 <b>responsible for that?</b></p> <p>23 A I don't.</p> <p>24 <b>Q How are you made aware of that change?</b></p> <p>25 A Well, we initiated the change. We made the</p>

25 (Pages 97 to 100)

<p style="text-align: right;">Page 101</p> <p>1 request. We contacted the presiding judge, Tom Mountjoy,  2 and asked if that could be done to try to reduce caseload  3 and they agreed that they could do that.</p> <p>4 <b>Q I want to go back to you mentioned the day</b>  5 <b>where Judge Johnson ordered your attorneys to stay in court</b>  6 <b>to take new indigency applications. You mentioned the</b>  7 <b>reaction of one of your attorneys. I was wondering what</b>  8 <b>was the reaction of the other attorney who was present, if</b>  9 <b>you know?</b></p> <p>10 A The reaction was that she upset by it.</p> <p>11 <b>Q Did she say anything to you?</b></p> <p>12 A Well, yeah. I mean, I had more than one  13 conversation with her about what had occurred and, you  14 know, how we were -- how she was feeling about it, yeah,  15 and talking about how to deal with this going forward.</p> <p>16 <b>Q What did she say?</b></p> <p>17 A I'm not sure what you're asking me. I mean, I  18 stated she was upset. I mean, I can't give you verbatim  19 exactly what she said. I'm sorry. Are you asking me what  20 she said occurred or how she felt about it?</p> <p>21 <b>Q How she felt about it?</b></p> <p>22 A Yeah, I mean, she just said that she was  23 upset.</p> <p>24 <b>Q Was there a complaint filed against Judge</b>  25 <b>Johnson?</b></p>	<p style="text-align: right;">Page 103</p> <p>1 docket entries of re-referring us and re-referring us, you  2 know, specifically said she is expecting District Defender  3 Rod Hackathorn to enter his appearance by such and such  4 date, which I considered a negative reaction, but, no,  5 nothing other than that.</p> <p>6 <b>Q If your attorneys spent the time they thought</b>  7 <b>necessary to zealously prepare a client's case, say a case</b>  8 <b>that was going to trial, what in your opinion would happen</b>  9 <b>to that attorney's other clients?</b></p> <p>10 A They get ignored.</p> <p>11 <b>Q Are there times where attorneys in your office</b>  12 <b>have to triage cases doing less on one case so they can do</b>  13 <b>enough on another?</b></p> <p>14 A Happens all the time.</p> <p>15 <b>Q How frequently would you say?</b></p> <p>16 A It happens every day.</p> <p>17 <b>Q Is there anything else you think we should</b>  18 <b>know regarding the ability of your office to provide</b>  19 <b>effective representation to your clients?</b></p> <p>20 A Not that I can think of.</p> <p>21 MR. SHAHABIAN: I have no further questions of  22 this time.</p> <p>23 QUESTIONS BY MR. RAMSEY:</p> <p>24 <b>Q Good afternoon.</b></p> <p>25 A Good afternoon.</p>
<p style="text-align: right;">Page 102</p> <p>1 A I don't know whether Mr. Barrett has filed a  2 complaint or not. I know that there was a discussion with  3 him about doing that.</p> <p>4 <b>Q In your office there was that discussion?</b></p> <p>5 A Yes.</p> <p>6 <b>Q Why did your office not file a complaint?</b></p> <p>7 A Well, initially I was going to file a  8 complaint but then we had conversation with Mr. Barrett  9 about whether or not that should come from him and the  10 conversation kind of went that direction that he would do  11 that. Then, ultimately, Mr. Mettler, the attorney that  12 resigned, sent an e-mail to Mr. Barrett that -- I can't  13 remember exactly how it was phrased -- but it was -- it was  14 blunt as to thinking he needed to get that done and get it  15 done right away and that I think kind of ended that as far  16 as the complaint getting filed.</p> <p>17 <b>Q Do you know of any -- can you recall any</b>  18 <b>specific reactions by judges, other than Judge Johnson, to</b>  19 <b>attorneys from your office declining appointments?</b></p> <p>20 A Any negative reactions?</p> <p>21 <b>Q Or positive.</b></p> <p>22 A Well, not to me directly and not necessarily  23 to our attorneys directly. It's just, you know, in the  24 docket entries of -- I had mentioned earlier Judge Palmetto  25 was the judge. She was the one that after a couple of</p>	<p style="text-align: right;">Page 104</p> <p>1 <b>Q Again, my name is Steven Alan Ramsey. I</b>  2 <b>represent Governor Greitens and the State of Missouri. I</b>  3 <b>also have a handful of questions for you. But at any time,</b>  4 <b>please if at any time, you need a break, please let me know</b>  5 <b>and we can take a break immediately.</b></p> <p>6 A Okay.</p> <p>7 <b>Q All right. Going back to your background:</b>  8 <b>You came straight from law school into the Missouri State</b>  9 <b>Public Defender System; did I hear you correctly?</b></p> <p>10 A That's correct.</p> <p>11 <b>Q And before that, did you go straight from</b>  12 <b>undergrad into law school?</b></p> <p>13 A I had a one-year gap between undergrad and law  14 school.</p> <p>15 <b>Q And what did you do at that gap year?</b></p> <p>16 A I worked very briefly at JCPenney.</p> <p>17 <b>Q Okay. And undergrad, what was your degree or</b>  18 <b>degrees in?</b></p> <p>19 A Sociology.</p> <p>20 <b>Q Also concerning some of the preparation, not</b>  21 <b>necessarily for this deposition, but just your</b>  22 <b>conversations concerning caseload and workload concerns. I</b>  23 <b>understand this is a very general question because this has</b>  24 <b>been an ongoing issue for sometime; who all have you spoken</b>  25 <b>to within the past few years concerning a workload and</b></p>

<p style="text-align: right;">Page 105</p> <p>1 caseload concern? I take it the private members of the bar</p> <p>2 was one group. You have spoken to judges at some point.</p> <p>3 Have you had any conversations with none for profit</p> <p>4 organizations or the press?</p> <p>5 A No.</p> <p>6 Q Sitting here today, do you have a sense of how</p> <p>7 many cases total your office has open right now?</p> <p>8 A Has open right at this moment?</p> <p>9 Q Yes, sir.</p> <p>10 A I believe we have somewhere around 2,300 open</p> <p>11 cases.</p> <p>12 Q Do you have a sense for how many criminal</p> <p>13 cases are filed total within the area that your district</p> <p>14 covers?</p> <p>15 A Over what period? I'm not sure I understand</p> <p>16 your question.</p> <p>17 Q Over the past year or so. So say there are</p> <p>18 100 total cases; how many of those total cases are coming</p> <p>19 to the public defender system versus the system at large?</p> <p>20 A I don't know.</p> <p>21 Q A related question but slightly different is</p> <p>22 how you define a case or a matter in your system?</p> <p>23 A A case is a -- goes by case number. It's not</p> <p>24 by charge. It's however many charges may be in that case.</p> <p>25 It's still a case no matter how many charges may be in that</p>	<p style="text-align: right;">Page 107</p> <p>1 finished their representation, needs to bring that file</p> <p>2 into our main area where our clerks are at and there is a</p> <p>3 cabinet for them. Then our clerks go through that every</p> <p>4 week and try to get those files closed.</p> <p>5 Q This is a larger picture question: Has your</p> <p>6 office seen a dramatic increase in the amount of criminal</p> <p>7 cases filed in this region --</p> <p>8 A Yes.</p> <p>9 Q -- than in recent years?</p> <p>10 A I'm sorry, yes, absolutely we have.</p> <p>11 Q Do you have a sense why that has occurred?</p> <p>12 A Our prosecutor's office, especially here in</p> <p>13 Greene County, they got some additional funding and were</p> <p>14 able to increase their numbers. From what I understand</p> <p>15 from our prosecuting attorney, Mr. Patterson, they were</p> <p>16 able to work through a backload of cases that they said</p> <p>17 still needed to be filed. Now that's according to him; I</p> <p>18 don't know. But I know it's around that time that he added</p> <p>19 people to his staff that our numbers shot up.</p> <p>20 Q And if you don't know the answer to this, it's</p> <p>21 completely fine, but has the population of the Springfield</p> <p>22 area dramatically increased as well during this time</p> <p>23 period?</p> <p>24 A Our whole general area of Greene, Christian,</p> <p>25 and Taney; the population has increased significantly down</p>
<p style="text-align: right;">Page 106</p> <p>1 related to that particular case number.</p> <p>2 Q Now if we could turn very briefly to</p> <p>3 Plaintiff's Exhibit 48, that's the appraisal form.</p> <p>4 A Okay.</p> <p>5 Q I'm looking at the third page Bates Stamped</p> <p>6 15898.</p> <p>7 A Okay.</p> <p>8 Q Do you see that very last line below the graph</p> <p>9 or the grid?</p> <p>10 A Yes.</p> <p>11 Q Would you read that out loud for the record?</p> <p>12 A "Attached is a breakdown of Dawn's open</p> <p>13 caseload. She admits it is a bit inflated as there are</p> <p>14 several recently disposed of cases that need to be closed."</p> <p>15 Q How does your office go about deciding when a</p> <p>16 case is closed?</p> <p>17 A A case is closed whenever our representation</p> <p>18 has ended, whether that be because the defendant has been</p> <p>19 sentenced or the case has been dismissed or they've had a</p> <p>20 trial and won or they've had a trial and lost and we've</p> <p>21 send it onto an appellate's office.</p> <p>22 Q And do you have a sense for when those cases</p> <p>23 are closed, when they are reflected in the system; is that</p> <p>24 an immediate thing?</p> <p>25 A It is not. The attorney, after they have</p>	<p style="text-align: right;">Page 108</p> <p>1 here more than I think any other part of the state.</p> <p>2 Q Turning to the makeup of your current office.</p> <p>3 So at full staff there are 22 attorneys; is that correct?</p> <p>4 A At full staff, yes.</p> <p>5 Q At full staff. But currently there are 19</p> <p>6 attorneys including yourself?</p> <p>7 A That's correct.</p> <p>8 Q And you had mentioned that there are eight</p> <p>9 support staff or eight full-time support staff?</p> <p>10 A That's correct as well.</p> <p>11 Q And I think you testified that at least two of</p> <p>12 those are investigators?</p> <p>13 A Yes.</p> <p>14 Q What are the other six? How does that</p> <p>15 breakdown go?</p> <p>16 A Sure. We have three office support assistants</p> <p>17 and then we have three legal assistants.</p> <p>18 Q And you also have the one part-time support</p> <p>19 staff position?</p> <p>20 A Yes.</p> <p>21 Q What is that position?</p> <p>22 A It doesn't really have a title. She is</p> <p>23 actually a retired clerk from our office and she just comes</p> <p>24 in to help do some of those things like getting files</p> <p>25 closed in the system and that sort of thing.</p>

27 (Pages 105 to 108)



<p style="text-align: right;">Page 109</p> <p>1       <b>Q</b> Now you mentioned that the – there are two</p> <p>2       documents, at least if I'm understanding you correctly,</p> <p>3       that are similar guiding principles for representation.</p> <p>4       One being the guidelines for representation and the second</p> <p>5       one being the Employee Handbook if I understand your</p> <p>6       testimony correctly?</p> <p>7       A I think I refer to the Employee Handbook more</p> <p>8       as when the question was things that guide me and my</p> <p>9       administrative duties.</p> <p>10       <b>Q</b> I see. Have you supplemented either of those</p> <p>11       documents with local rules or local policies that you, as a</p> <p>12       district defender, have discretion to, I guess, enforce or</p> <p>13       create?</p> <p>14       A There is a small handful of local written</p> <p>15       office policies that we have, yes.</p> <p>16       <b>Q</b> Are any of those policies related to workload</p> <p>17       or caseload concerns or controlling mechanisms?</p> <p>18       A I don't believe so. I think they are all</p> <p>19       relating to more as just how we function as an office and</p> <p>20       that sort of thing.</p> <p>21       <b>Q</b> Turning to your office's determination for</p> <p>22       indigency. I think I understood your testimony to suggest</p> <p>23       that in juvenile matters when your office was representing</p> <p>24       juveniles, that was merely a court-appointed function. So</p> <p>25       your office didn't have an independent indigency</p>	<p style="text-align: right;">Page 111</p> <p>1       <b>Q</b> Sitting here today, do you have a sense for</p> <p>2       how often your office rejects applications for services?</p> <p>3       A It happens, but I couldn't tell you</p> <p>4       percentage-wise how often it occurs.</p> <p>5       <b>Q</b> So it happens often? Sparingly? Or even</p> <p>6       that?</p> <p>7       A Well, I'd say it happens at least probably</p> <p>8       once a week or so. Anything that's a close call,</p> <p>9       especially with the support staff, I have them come to me</p> <p>10       to make the ultimate determination.</p> <p>11       <b>Q</b> Are you aware of any situations or examples –</p> <p>12       and you don't have to go into any details if you are – of</p> <p>13       where you accepted representation, but subsequently to</p> <p>14       that, something occurred; for instance a large bond was</p> <p>15       posted in a separate case or a private attorney was hired</p> <p>16       in a second case or something to the effect that you all</p> <p>17       questioned the person's indigency status and proceeded to</p> <p>18       withdraw or I guess modify representation?</p> <p>19       A Yes.</p> <p>20       <b>Q</b> Does that happen frequently or it happens</p> <p>21       sparingly?</p> <p>22       A That probably happens more sparingly, but it</p> <p>23       certainly does happen.</p> <p>24       <b>Q</b> Has your – I guess emphasis is maybe not the</p> <p>25       right word – but your breakdown of administrative task</p>
<p style="text-align: right;">Page 110</p> <p>1       determination mechanism?</p> <p>2       A There is a form. But pretty much if a</p> <p>3       juvenile was referred, we took the case. But there is a</p> <p>4       form for that.</p> <p>5       <b>Q</b> Okay. And that form is that a form that you</p> <p>6       all still reviewed before the ultimate acceptance; or once</p> <p>7       the court appointed the MSPD, representation you all</p> <p>8       accepted it?</p> <p>9       A We still went through the motions of having</p> <p>10       that application filled out, but for the most part it was</p> <p>11       meaningless.</p> <p>12       <b>Q</b> So turning to non-juvenile matters. Who makes</p> <p>13       the determination for whether or not an individual is</p> <p>14       eligible for services?</p> <p>15       A That depends on where the application is taken</p> <p>16       at. At lot of times with Christian and Taney counties,</p> <p>17       that determination is made by our attorneys. In Greene</p> <p>18       County, more often than not, it is made by support staff.</p> <p>19       <b>Q</b> And does your office have any independent</p> <p>20       checks or verification? Or do you all simply refer to or</p> <p>21       rely upon the application itself?</p> <p>22       A Unfortunately, we mostly have to rely on the</p> <p>23       application itself. I just don't have the support staff</p> <p>24       needed to try to verify the information that's in that</p> <p>25       application.</p>	<p style="text-align: right;">Page 112</p> <p>1       versus your actual caseload that you carry – I believe the</p> <p>2       numbers were around 75 to 25 percent – has that always</p> <p>3       been the case since you have been the district defender?</p> <p>4       A No.</p> <p>5       <b>Q</b> Could you explain that evolution, if you will?</p> <p>6       Did you start off having more cases? Did you start off</p> <p>7       having less cases? And why have you gotten to this point?</p> <p>8       A I started off having more cases. As this area</p> <p>9       has continued to grow and the caseloads have increased more</p> <p>10       and more and more, other offices around the state have lost</p> <p>11       positions and we have gained positions. There were far</p> <p>12       fewer people in my office when I started as district</p> <p>13       defender than there are now. So the administrative duties</p> <p>14       have increased a lot.</p> <p>15       <b>Q</b> So would you say that it is a function of</p> <p>16       simply just having more cases and more work to do that your</p> <p>17       administrative tasks have grown? Or have you found that</p> <p>18       there is a benefit to you being more of a supervisor and a</p> <p>19       mentor to the attorneys in your office?</p> <p>20       A I think it's a little of both.</p> <p>21       <b>Q</b> Concerning your supervision of attorneys: How</p> <p>22       often would you say you're having mentor-like conversations</p> <p>23       with the various attorneys in your office?</p> <p>24       A Every day. Every day there is somebody in my</p> <p>25       office and we are talking about some of their cases. So it</p>

28 (Pages 109 to 112)

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<p style="text-align: right;">Page 113</p> <p>1 happens a lot.</p> <p>2 <b>Q And the various motions, I believe you had</b></p> <p>3 <b>testified that there is a motion bank or a draft bank</b></p> <p>4 <b>somewhere within your system that your attorneys pick and</b></p> <p>5 <b>choose from in their every day representation?</b></p> <p>6 A Yes.</p> <p>7 <b>Q Is that something that's local to your office</b></p> <p>8 <b>and that's something that you have created as a district</b></p> <p>9 <b>defender? Or how did that bank, I guess, become effective</b></p> <p>10 <b>or come into existence?</b></p> <p>11 A There is actually both. We have one that's</p> <p>12 local and that kind of boilerplate motions that we have</p> <p>13 drafted individually within our office and saved for other</p> <p>14 people to use. Then there is one that I believe is on for</p> <p>15 the entire state can access.</p> <p>16 <b>Q Do you have a sense -- this is taking two</b></p> <p>17 <b>steps back -- if you supervise your attorneys more so than</b></p> <p>18 <b>any of the other district defenders that you know of in</b></p> <p>19 <b>their various districts? Do you have a sense if your</b></p> <p>20 <b>supervision is more or less than them or?</b></p> <p>21 A I couldn't speak to what other district</p> <p>22 defenders are doing.</p> <p>23 <b>Q You testified earlier that -- I don't know if</b></p> <p>24 <b>it was every jail or whether it was in Greene County or</b></p> <p>25 <b>Christine County or Taney County sends you a census. I</b></p>	<p style="text-align: right;">Page 115</p> <p>1 municipal warrant. We can check that as well. And now,</p> <p>2 like I said, you know, it's also being used to see whether</p> <p>3 or not they are even here or whether Greene County has</p> <p>4 farmed them out to another jail due to overcrowding.</p> <p>5 <b>Q What other -- concessions is not the right</b></p> <p>6 <b>word -- but what other results or tools have been created</b></p> <p>7 <b>similar to receiving that census report, either every day</b></p> <p>8 <b>or every week, to help manage caseload and workload</b></p> <p>9 <b>concerns?</b></p> <p>10 A I'm not sure I understand what you're asking</p> <p>11 me.</p> <p>12 <b>Q So would you say that receiving that census</b></p> <p>13 <b>report, if it's every morning or every week, helps you know</b></p> <p>14 <b>before you get to the jail whether or not someone is there</b></p> <p>15 <b>and so on and so forth?</b></p> <p>16 A Yes.</p> <p>17 <b>Q Could that also be considered a timesaving</b></p> <p>18 <b>mechanism as well so you don't have to drive to courthouse</b></p> <p>19 <b>or to the jail cell to find out if they are there or not?</b></p> <p>20 A It is a timesaving measure, yes.</p> <p>21 <b>Q So my question is if that came about because</b></p> <p>22 <b>you requested it and it was -- I don't know if it's a</b></p> <p>23 <b>concession or it's an agreement that was made -- are there</b></p> <p>24 <b>other similar cost-saving mechanisms due to your initiative</b></p> <p>25 <b>or your conversation that you've had with judges or the</b></p>
<p style="text-align: right;">Page 114</p> <p>1 <b>don't know if it was every day, but that process; is that</b></p> <p>2 <b>correct? They send you a census from time to time?</b></p> <p>3 A Greene County sends us one every morning.</p> <p>4 Christian County sends us one -- I'm not sure if it's every</p> <p>5 morning; it might be once a week. Taney County, I'm not</p> <p>6 exactly sure about.</p> <p>7 <b>Q Has that always been the case or did that come</b></p> <p>8 <b>about because of conversations that you or your predecessor</b></p> <p>9 <b>had in this role?</b></p> <p>10 A That came about by me requesting to get those.</p> <p>11 <b>Q Why did you request that you receive those</b></p> <p>12 <b>census reports or files?</b></p> <p>13 A Well, with Greene County -- off the top my</p> <p>14 head I can't remember why I ended up requesting it for</p> <p>15 Christian County. It's been a while back. But Greene</p> <p>16 County it came about for a couple of reasons. One, back</p> <p>17 when I first requested it, they liked for us to come with</p> <p>18 our sheets ready for who we wanted to see and that let us</p> <p>19 know what pod they were in and what cell number so we could</p> <p>20 fill out the form. Also let us know if they were in</p> <p>21 segregation. It let us know also by the census of what</p> <p>22 they were being held on. So if, for instance, we wanted to</p> <p>23 file a bond reduction request, we could look there and see,</p> <p>24 well, is that going to do us doing any good. Maybe there</p> <p>25 is a hold on them for the Feds or maybe there is a</p>	<p style="text-align: right;">Page 116</p> <p>1 <b>prosecutors in the state, generally?</b></p> <p>2 A It's not having to do juvenile cases in Greene</p> <p>3 County anymore would be one. Other than that, we haven't</p> <p>4 really been able to come to a meeting of the minds of</p> <p>5 anything else that the court or the prosecutor's office</p> <p>6 could do to help reduce caseload or save time.</p> <p>7 <b>Q During some of the conversations that you have</b></p> <p>8 <b>had -- and now I'm jumping around and I apologize for</b></p> <p>9 <b>that -- conversations you've had with the prosecutors and</b></p> <p>10 <b>judges where I believe you testified that some of those</b></p> <p>11 <b>meetings had become I guess complaints against you and the</b></p> <p>12 <b>Missouri Public Defender System; were there some things</b></p> <p>13 <b>that were brought up in some of those meetings, or any of</b></p> <p>14 <b>those meetings, that were suggestions by any of those other</b></p> <p>15 <b>parties in how you all could improve your workload or</b></p> <p>16 <b>caseload concerns?</b></p> <p>17 A Well, outside of that meeting that I referred</p> <p>18 to with Judge Johnson that was, you know, within the last</p> <p>19 few months; the other meetings that I was referring to took</p> <p>20 place years ago and I don't recall.</p> <p>21 <b>Q Turning to the performance review, and I</b></p> <p>22 <b>actually don't believe I'm going to need to look at the</b></p> <p>23 <b>actual exhibit, but how often do you perform performance</b></p> <p>24 <b>reviews on the APD III's and IV's?</b></p> <p>25 A Well, the APD III's would get reviewed a</p>

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<p style="text-align: right;">Page 117</p> <p>1 couple of years after they made APD III because then they</p> <p>2 would be eligible for potential APD IV promotion. APD IV,</p> <p>3 that's just something that just kind of fell through the</p> <p>4 cracks for a very long time and that's why I initiated here</p> <p>5 recently that we needed to go through all of our APD IV's</p> <p>6 and do file reviews and performance evaluations to see</p> <p>7 where they were at.</p> <p>8 <b>Q I will apologize, I lied when I said I wasn't</b></p> <p>9 <b>going to turn to the exhibit. Turning to Plaintiffs</b></p> <p>10 <b>Exhibit 49 now.</b></p> <p>11 A I lost it somewhere here in the shuffle. Got</p> <p>12 it.</p> <p>13 <b>Q So my understanding from your testimony</b></p> <p>14 <b>earlier was that this particular public defender was having</b></p> <p>15 <b>issues meeting the standardized expectation of meeting with</b></p> <p>16 <b>clients every 30 days or having those face-to-face</b></p> <p>17 <b>conversations every 30 days; is that accurate?</b></p> <p>18 A That's what is written here, yes.</p> <p>19 <b>Q And that first full paragraph under client</b></p> <p>20 <b>counseling, four lines from the bottom, could you read --</b></p> <p>21 <b>or I guess that second to last sentence starting with "we</b></p> <p>22 <b>get."</b></p> <p>23 A "We get almost never get a client complaint</p> <p>24 about lack of contact concerning Paul, which tells me he is</p> <p>25 keeping good contact with his clients and that he has a</p>	<p style="text-align: right;">Page 119</p> <p>1 questioning, these complaints that you receive as a</p> <p>2 district defender; is that a system that you set-up where</p> <p>3 clients -- either current clients or former clients -- are</p> <p>4 sending you complaints about their various representations?</p> <p>5 Or talk me through how that process works at least in your</p> <p>6 district?</p> <p>7 A How those complaints get to me?</p> <p>8 <b>Q Yes, sir.</b></p> <p>9 A Well, if it's an incarcerated client, I have</p> <p>10 been doing this long enough know that it's known in all of</p> <p>11 the counties that we cover that I supervise that office.</p> <p>12 So there really doesn't seem to need a processing place.</p> <p>13 They write me. They write me specifically. If somebody is</p> <p>14 out of custody and they call and they are complaining, you</p> <p>15 know, my staff is instructed to send those calls either to</p> <p>16 me or the deputy district defender.</p> <p>17 <b>Q And are those complaints or those letters</b></p> <p>18 <b>maintained in a database that you have? Or is it</b></p> <p>19 <b>maintained in the central office? Do you send it up to</b></p> <p>20 <b>upper management or how does that work?</b></p> <p>21 A It doesn't get up to upper management unless</p> <p>22 we've got a real performance problem with that attorney</p> <p>23 that I have not been able to correct. Other than that,</p> <p>24 these letters go into the client's file and that's where</p> <p>25 the letters stay.</p>
<p style="text-align: right;">Page 118</p> <p>1 good relationship with them."</p> <p>2 <b>Q Is it possible to not meet the 30-day</b></p> <p>3 <b>face-to-face requirement and to maintain good contact and</b></p> <p>4 <b>good relationships with potential clients or I guess with</b></p> <p>5 <b>actual clients?</b></p> <p>6 A Well, once again, I didn't write this, my</p> <p>7 deputy district defender did. I think what he's getting</p> <p>8 across here is that when he is meeting with his clients, he</p> <p>9 is giving them a good amount of devoted time. You know,</p> <p>10 file focused or case focused and is doing his best to --</p> <p>11 given the constraints that we had in Christian County, that</p> <p>12 he is doing about as good as he could do. But I would</p> <p>13 still say you certainly need recurring client contact to</p> <p>14 have a good attorney-client relationship and to comply with</p> <p>15 the ethical rules.</p> <p>16 <b>Q So to be clear, this 30-day expectation with</b></p> <p>17 <b>face-to-face meeting is your testimony that you think that</b></p> <p>18 <b>is a requirement to meet that ethical rule or guideline of</b></p> <p>19 <b>sorts?</b></p> <p>20 A Well, that's MSPD guideline. It's certainly</p> <p>21 not mentioned in the ethical rule itself. And I think my</p> <p>22 personal opinion is that's probably a pretty generous</p> <p>23 amount of time even at that 30 days and we are not meeting</p> <p>24 that.</p> <p>25 <b>Q Turning away from that particular line of</b></p>	<p style="text-align: right;">Page 120</p> <p>1 <b>Q Continuing to, I believe it was marked as</b></p> <p>2 <b>Plaintiff's Exhibit 50, I believe. It's the Missouri State</b></p> <p>3 <b>Public Defender System Fiscal Year Report.</b></p> <p>4 A Yes.</p> <p>5 <b>Q I'm going to be looking at that last page when</b></p> <p>6 <b>you get to it.</b></p> <p>7 A Okay.</p> <p>8 <b>Q Do I understand your testimony earlier to</b></p> <p>9 <b>suggest that you did not have a hand in creating this</b></p> <p>10 <b>document?</b></p> <p>11 A That's correct.</p> <p>12 <b>Q And you also do not have a, I guess, an</b></p> <p>13 <b>understanding of the underlying data inputs that went into</b></p> <p>14 <b>creating any of these various metrics?</b></p> <p>15 A That's fair to say.</p> <p>16 <b>Q Okay. Turning to expert testimony. You had</b></p> <p>17 <b>mentioned that cost may be a factor in whether or not a</b></p> <p>18 <b>particular expert is utilized or allowed to be utilized by</b></p> <p>19 <b>an assistant public defender; is that correct?</b></p> <p>20 A Whether they would be allowed to utilize that</p> <p>21 specific expert or maybe there might be one that is more</p> <p>22 cost effective, yes.</p> <p>23 <b>Q Have you in your practice ever been denied an</b></p> <p>24 <b>expert solely because there was not enough funds to pay for</b></p> <p>25 <b>that expert?</b></p>

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<p style="text-align: right;">Page 121</p> <p>1 A No.</p> <p>2 Q Have you ever denied someone that you</p> <p>3 supervise in the public defender system as a district</p> <p>4 defender an expert testimony because there were solely just</p> <p>5 not funds available?</p> <p>6 A No.</p> <p>7 Q For depositions, would your answers be the</p> <p>8 same? Have you ever been denied funds for a deposition</p> <p>9 that you wanted to take?</p> <p>10 A No.</p> <p>11 Q Have you ever denied a deposition request from</p> <p>12 an attorney that you supervise because there were not</p> <p>13 enough funds available?</p> <p>14 A No.</p> <p>15 Q Speaking about the budget. You had testified</p> <p>16 earlier, if I understood you correctly, that when certain,</p> <p>17 I guess line items for lack of a better phrase, or certain</p> <p>18 categories are depleted, you would call the comptroller and</p> <p>19 hey, say this fund is either close to running dry or it's</p> <p>20 dry. We need more funds for this. What are some examples</p> <p>21 of like the categories where areas would run out?</p> <p>22 A The only area that that has ever actually</p> <p>23 really happened that I can think of is with our travel</p> <p>24 expenses.</p> <p>25 Q And how are the travel expenses policed for</p>	<p style="text-align: right;">Page 123</p> <p>1 Q And are those trials -- are we only talking</p> <p>2 about jury trials or are we talking about jury and bench</p> <p>3 trials?</p> <p>4 A I'm just talking about jury trials.</p> <p>5 Q At this point in time, is your office tracking</p> <p>6 time in five minute-increments?</p> <p>7 A No.</p> <p>8 Q Is your office tracking time by tasks or by</p> <p>9 cases?</p> <p>10 A No.</p> <p>11 Q Is the extent of your timekeeping process</p> <p>12 right now the hours worked per day or per pay period?</p> <p>13 A Yes.</p> <p>14 Q Okay. Do you have a sense of when the last</p> <p>15 period of time was -- not the system at large, but your</p> <p>16 particular district -- was tracking time in that, I guess,</p> <p>17 more billable hours type of situation?</p> <p>18 A I don't recall the exact date. It seems like</p> <p>19 it's been around a year or so ago.</p> <p>20 Q Turning to the conversation concerning the</p> <p>21 example of the late discovery request and how you have a</p> <p>22 process set up in your office to ensure that doesn't happen</p> <p>23 in terms of the attorneys not having to file that</p> <p>24 themselves, there being a process that's helps them usher</p> <p>25 that process along. Is that something that you help create</p>
<p style="text-align: right;">Page 122</p> <p>1 lack of a better word?</p> <p>2 A I wouldn't say that they are policed. The</p> <p>3 attorneys do fill out an expense report at the end of each</p> <p>4 month as to the mileage they are claiming. I do go through</p> <p>5 that and I have them put on there why they went to a</p> <p>6 location. Not just that they went to a location, what case</p> <p>7 they went there for and why they went there and I verify</p> <p>8 that. I go through and look at those expense reports.</p> <p>9 But, you know, ahead of time, nothing but after the fact,</p> <p>10 that's what I do.</p> <p>11 Q You mentioned that you don't go to -- or you</p> <p>12 or your office don't go to trial as much as you possibly</p> <p>13 should; is that a correct --</p> <p>14 A As much as I think we probably should be, yes,</p> <p>15 correct.</p> <p>16 Q And I remember you saying you don't have a</p> <p>17 sense of how many trials you tried within your office</p> <p>18 within the past year. Can you remember one case that has</p> <p>19 been tried within the past year?</p> <p>20 A Yes.</p> <p>21 Q Can you recollect five cases that have been</p> <p>22 tried within the past year?</p> <p>23 A Yes.</p> <p>24 Q How about ten?</p> <p>25 A Now you're getting close I'd say.</p>	<p style="text-align: right;">Page 124</p> <p>1 to be a timesaving mechanism or is that something that came</p> <p>2 from some other location?</p> <p>3 A No, it's something we created for our office</p> <p>4 to try to save a little bit of our attorney's time.</p> <p>5 Q Have you found that helps?</p> <p>6 A I think it does. I don't know. I haven't</p> <p>7 polled the attorneys to find out.</p> <p>8 Q Are there other examples where you have put in</p> <p>9 place processes like that to save time within your</p> <p>10 district?</p> <p>11 A Similar sort of things in trying to utilize</p> <p>12 support staff as much as we possibly can. But once again I</p> <p>13 don't have near the amount of support staff I would need to</p> <p>14 take all of the administrative and clerical task off of the</p> <p>15 attorneys hands, but we try as best we can.</p> <p>16 Q Have you as a district defender created or put</p> <p>17 on any type of internal trainings for your assistant public</p> <p>18 defenders to help with their caseload or workload concerns?</p> <p>19 A Not internal trainings, no.</p> <p>20 Q And sitting here today, there were a number of</p> <p>21 statements made concerning, if I understood you correctly,</p> <p>22 concerning your office being short-staffed or needing more</p> <p>23 resources to do -- to provide effective caseload</p> <p>24 representation or your office needing more resources. My</p> <p>25 question is, is that assessment based essentially solely on</p>

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<p style="text-align: right;">Page 125</p> <p>1 the RubinBrown report or numbers that -- I will stop there.</p> <p>2 Is that based solely on the RubinBrown report?</p> <p>3 A No.</p> <p>4 Q What else is that based upon?</p> <p>5 A It's based upon my own observation of what</p> <p>6 attorneys are able to do and not able to do. My own</p> <p>7 experience before I was even a district defender as an</p> <p>8 assistant public defender with a caseload like they have</p> <p>9 knowing that I was wasn't able to get everything done. No,</p> <p>10 it's not strictly based off of the RubinBrown numbers.</p> <p>11 Q Have you compared your caseload and workload</p> <p>12 concerns to say comparable public defender districts in</p> <p>13 other states?</p> <p>14 A I leave that to other people.</p> <p>15 Q Okay. If I understood your testimony</p> <p>16 correctly, you testified -- I don't know to say that it is</p> <p>17 the appropriate word, but the Section 600.063 creates</p> <p>18 additional barriers to public defenders that are not in</p> <p>19 place for other attorneys; is that pretty accurate?</p> <p>20 A That's correct.</p> <p>21 Q So with that, that thought process or that</p> <p>22 feeling or however you want to describe that; instead of</p> <p>23 filing that Chapter 600 motion, you decided to proceed via</p> <p>24 letters of communication with the applicable judges in your</p> <p>25 district?</p>	<p style="text-align: right;">Page 127</p> <p>1 QUESTIONS BY MS. SHIPMA:</p> <p>2 Q Did I understand you earlier to say that there</p> <p>3 are many times that your attorneys go to preliminary</p> <p>4 hearings without having received discovery?</p> <p>5 A Yes, that happens.</p> <p>6 Q And why does that happen?</p> <p>7 A Well, for one the rules don't provide that the</p> <p>8 State has to provide that prior to the preliminary hearing.</p> <p>9 In fact, we filed that request for discovery and it's</p> <p>10 timely only after the case has reached circuit court. Now,</p> <p>11 with our relationship with certain prosecutor's offices,</p> <p>12 they do sometimes provide that to us upon our e-mailed</p> <p>13 request. They will get it to us ahead of time, but not</p> <p>14 always.</p> <p>15 Q Regarding the complaint letters that you get</p> <p>16 from clients regarding your attorneys, how frequently do</p> <p>17 you receive complaints letters?</p> <p>18 A Every week.</p> <p>19 Q Multiple times a week?</p> <p>20 A Usually.</p> <p>21 Q Multiple letters a week?</p> <p>22 A Yes.</p> <p>23 Q How long might a completed case remain open in</p> <p>24 the case management system before it's closed in your</p> <p>25 office?</p>
<p style="text-align: right;">Page 126</p> <p>1 A Yes.</p> <p>2 Q And the waitlist that was created; was that</p> <p>3 created based upon the conversations you had after the</p> <p>4 Hinkebein decision? After that meeting where all the</p> <p>5 district defenders and upper management got together, or is</p> <p>6 that something you decided upon, I guess, in isolation or</p> <p>7 by yourself?</p> <p>8 A If you're asking me if we were instructed to</p> <p>9 create a waitlist at that management meeting, no we</p> <p>10 weren't. A lot of various responses were discussed at that</p> <p>11 management meeting. But basically because this is not a</p> <p>12 MSPD policy thing, it's an individual attorney thing, the</p> <p>13 responses were going to be varied around the state and so</p> <p>14 that's how we chose to proceed here.</p> <p>15 Q Have you ever been judicially determined to</p> <p>16 have provided ineffective assistance of counsel?</p> <p>17 A I don't believe so.</p> <p>18 Q Has an attorney that you supervise ever been</p> <p>19 judicially determined to have provided ineffective</p> <p>20 assistance of counsel?</p> <p>21 A I'm fairly certain, yes, but I'm not 100</p> <p>22 percent on that.</p> <p>23 MR. RAMSEY: I have no further questions.</p> <p>24 MS. SHIPMA: I have a few questions for you,</p> <p>25 Rod.</p>	<p style="text-align: right;">Page 128</p> <p>1 A Well, that -- it used to be way longer than I</p> <p>2 would have wanted. I mean, they would be in there</p> <p>3 sometimes for weeks before they would get closed in the</p> <p>4 system. With the additional part-time person that we have</p> <p>5 been able to add on -- I think Sharon came back on</p> <p>6 part-time right around maybe the start of the fiscal year</p> <p>7 around July -- we were able to catch up on that. And</p> <p>8 another part that was holding us back on getting those</p> <p>9 cases closed in the system is that's one of those things</p> <p>10 that the attorneys would back burner getting those files up</p> <p>11 there to be closed because they were done with it. They</p> <p>12 needed to move on to other stuff and they figured that's</p> <p>13 just an administrative task that could wait. Especially</p> <p>14 with doing these waitlists though, I made it clear to the</p> <p>15 attorneys that that's something that they needed to give a</p> <p>16 priority to. I wanted our numbers to be much more accurate</p> <p>17 and they have done a much better job, especially over the</p> <p>18 last three or four months, of getting those cases up there</p> <p>19 to close.</p> <p>20 Q How long do you think now, since the beginning</p> <p>21 of the fiscal year and since the waitlist, how long do they</p> <p>22 remain open now?</p> <p>23 A Within a week I'd say they are being closed in</p> <p>24 the system.</p> <p>25 Q And prior to your getting the part-time</p>

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<p style="text-align: right;">Page 129</p> <p>1 person, you said sometimes it might be weeks. Would it be</p> <p>2 more than a month?</p> <p>3 A I'd say it probably happened sometimes, yes.</p> <p>4 Q Do you know if that happened with any type of</p> <p>5 frequency on a regular basis?</p> <p>6 A Sometimes, yes. Also depending on certain</p> <p>7 attorneys too. Some back-burnered that task more than</p> <p>8 others.</p> <p>9 Q Would it be more than two months?</p> <p>10 A I'm not sure. I would hope not, but it's</p> <p>11 possible.</p> <p>12 Q I guess anything is possible. Do you believe</p> <p>13 that there are clients that your attorneys represent who</p> <p>14 aren't indigent pursuant to our regulations?</p> <p>15 A I'm sorry, ask that again.</p> <p>16 Q Do you believe that there are clients that</p> <p>17 your attorneys are representing that don't meet the</p> <p>18 indigent standards set forth in the regulations?</p> <p>19 A I suspect that.</p> <p>20 Q Do you think that happens frequently?</p> <p>21 A No.</p> <p>22 Q Do you think that weeding those out would</p> <p>23 cause a significant decrease in your caseload?</p> <p>24 A Certainly not significant, no.</p> <p>25 Q Does Greene County house federal prisoners?</p>	<p style="text-align: right;">Page 131</p> <p>1 QUESTIONS BY MR. SHAHABIAN:</p> <p>2 Q You mentioned during Mr. Ramsey's examination</p> <p>3 that the Greene County prosecutor's office added more</p> <p>4 staff, more attorneys. Do you know roughly how many</p> <p>5 attorneys were added?</p> <p>6 A I don't.</p> <p>7 Q But caseloads went up after more staff were</p> <p>8 added to the local prosecutors office?</p> <p>9 A Yeah, they went up pretty dramatically.</p> <p>10 Q In your opinion, how many more attorneys would</p> <p>11 you need to get caseloads to manageable standards in light</p> <p>12 of existing caseloads?</p> <p>13 A I would probably need about double the number</p> <p>14 of attorneys I have right now.</p> <p>15 Q You mentioned that you don't have enough</p> <p>16 support staff to prevent your attorneys from spending</p> <p>17 significant time on administrative task. Roughly how much</p> <p>18 time would you say assistant public defenders in your</p> <p>19 office spend on administrative caseload task versus</p> <p>20 attorney task?</p> <p>21 A I couldn't give you any kind of guess as to</p> <p>22 percentage. I just know they do have to do a lot of that.</p> <p>23 Q Do you have a rough estimate of how many more</p> <p>24 support staff you would need to free up attorney time spent</p> <p>25 on administrative caseload task?</p>
<p style="text-align: right;">Page 130</p> <p>1 A They do.</p> <p>2 Q Is that the reason for their jail</p> <p>3 overcrowding; do you know?</p> <p>4 A I would say it certainly contributes to it.</p> <p>5 Q Explain why they would do that?</p> <p>6 A Well, they get reimbursed for federal</p> <p>7 prisoners and the rate they get reimbursed for federal</p> <p>8 prisoners outweighs the cost of housing the state prisoners</p> <p>9 elsewhere, so they still end up making money.</p> <p>10 Q I want to show you -- refer you back to</p> <p>11 Exhibit 53. That was the e-mail that you sent to the</p> <p>12 judges on October 10. Do you have that in front of you?</p> <p>13 A Yes, it's right here.</p> <p>14 Q Was it solely your concerns regarding the</p> <p>15 process in Section 600.063 that caused you to write this</p> <p>16 letter rather than filing an .063 motion?</p> <p>17 A Well, it was my concerns about our attorneys</p> <p>18 saying that they all agreed that they were violating the</p> <p>19 ethical rule is the only reason why I wrote that letter.</p> <p>20 Q So it wasn't just because you didn't like .063</p> <p>21 that you wrote this letter instead of filing an .063?</p> <p>22 A That's correct.</p> <p>23 MS. SHIPMA: That's all.</p> <p>24 MR. SHAHABIAN: Just a few more follow-up</p> <p>25 questions.</p>	<p style="text-align: right;">Page 132</p> <p>1 A Support staff, I would need more than double</p> <p>2 easily.</p> <p>3 Q What kind of support staff would you need?</p> <p>4 A I would need far more office support</p> <p>5 assistants to do the calendaring and all the e-filing and</p> <p>6 all that sort of thing; all those clerical tasks. In a</p> <p>7 perfect world where I also had the additional attorneys and</p> <p>8 they were focusing on all of their cases as they should be,</p> <p>9 I would need more investigators too.</p> <p>10 Q And you have two investigators currently?</p> <p>11 A That's correct.</p> <p>12 Q Do you have a sense of how many more</p> <p>13 investigators you would need to provide adequate</p> <p>14 investigative assistance?</p> <p>15 A In this hypothetical where we had more</p> <p>16 attorneys and they were focusing on all of their cases;</p> <p>17 more than double number of investigators.</p> <p>18 Q Would triple be enough?</p> <p>19 A I don't know. In this hypothetical fantasy</p> <p>20 world, I don't know how to live yet. So, yeah, I would say</p> <p>21 probably triple.</p> <p>22 Q You mentioned in response to questioning from</p> <p>23 Ms. Shipma that you receive complaints from clients every</p> <p>24 week, multiple complaints a week. What are the most</p> <p>25 typical kinds of complaints you receive?</p>

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<p style="text-align: right;">Page 133</p> <p>1 A The No. 1 complaint across the board is lack</p> <p>2 of communication. That predominates. I'd say, if I'm just</p> <p>3 ball parking, I'd say 90 percent of the complaint letters I</p> <p>4 get is just that; I haven't heard from my attorney.</p> <p>5 <b>Q Do the complaints offer more specific reasons</b></p> <p>6 <b>why they want to talk to their attorneys other than I</b></p> <p>7 <b>haven't heard from them?</b></p> <p>8 A Yes. They will mention things like, you know,</p> <p>9 has there been any talk of an offer from the State. When</p> <p>10 is bond reduction request going to get filed. All kinds of</p> <p>11 questions, I mean, you know, that they have about their</p> <p>12 case that they want answered and only their attorney can</p> <p>13 really answer that for them.</p> <p>14 <b>Q You mentioned bond reduction request. Do you</b></p> <p>15 <b>think attorneys in your office have adequate time to file</b></p> <p>16 <b>bond reduction motions?</b></p> <p>17 A File, yes. Properly prepare for, no.</p> <p>18 <b>Q Why not properly prepare for?</b></p> <p>19 A Because I have seen the bond reduction</p> <p>20 request. I know -- they haven't spent enough time, not</p> <p>21 just with their client, but also maybe interviewing the</p> <p>22 client's family, finding out more about the background of</p> <p>23 their client, maybe getting some records, school records,</p> <p>24 military records; that sort of thing. That sort of thing</p> <p>25 is not done. Generally these bond reduction arguments are</p>	<p style="text-align: right;">Page 135</p> <p>1 THE VIDEOGRAPHER: This concludes the</p> <p>2 videotaped deposition of Rod Hackathorn at 12:52 p.m. We</p> <p>3 are off the record.</p> <p>4 (Deposition concluded at 12:52 p.m.)</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 134</p> <p>1 very quick off-the-cuff arguments and they are not done as</p> <p>2 elaborately as they should be to paint a full picture for</p> <p>3 the judge as to whether or not this person is a flight</p> <p>4 risk -- excuse me -- or danger to the community.</p> <p>5 <b>Q Mr. Ramsey asked you if you had any experience</b></p> <p>6 <b>or if you knew of any cases from your office where someone</b></p> <p>7 <b>was found to have provided ineffective assistance of</b></p> <p>8 <b>counsel. In your experience -- and not just limited to</b></p> <p>9 <b>attorneys in your office -- do excessive caseloads</b></p> <p>10 <b>contribute to cases where attorneys are unable to be</b></p> <p>11 <b>provide effective assistance and are adjudicated to have</b></p> <p>12 <b>not provided effective assistance?</b></p> <p>13 A Yes.</p> <p>14 MR. SHAHABIAN: I have no further questions.</p> <p>15 MR. RAMSEY: Just two.</p> <p>16 QUESTIONS BY MR. RAMSEY:</p> <p>17 <b>Q Have you ever gotten to a point in a filing or</b></p> <p>18 <b>in preparing for a particular trial where you have felt 100</b></p> <p>19 <b>percent ready and prepared to do whatever it is that you</b></p> <p>20 <b>were about to do?</b></p> <p>21 A Hundred percent?</p> <p>22 <b>Q Hundred percent.</b></p> <p>23 A No.</p> <p>24 MR. RAMSEY: No further questions.</p> <p>25 MR. SHAHABIAN: Thank you, Mr. Hackathorn.</p>	<p style="text-align: right;">Page 136</p> <p>1 CERTIFICATE OF REPORTER</p> <p>2 STATE OF MISSOURI )</p> <p>3 ) ss.</p> <p>4 COUNTY OF GREENE )</p> <p>5 I, Jenna Petree, do hereby certify that the</p> <p>6 witness whose testimony appears in the foregoing deposition</p> <p>7 was taken by me to the best of my ability and thereafter</p> <p>8 reduced to typewriting under my direction; that I am</p> <p>9 neither counsel for, related to, nor employed by any of the</p> <p>10 parties to the action in which this deposition was taken,</p> <p>11 and further that I am not a relative or employee of any</p> <p>12 attorney or counsel employed by the parties thereto, nor</p> <p>13 financially or otherwise interested in the outcome of the</p> <p>14 action.</p> <p>15</p> <p>16 Court Reporter</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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